

RAILROAD CONSOLIDATION UNDER THE TRANSPORTATION ACT OF 1920

BY

WILLIAM NORRIS LEONARD, M.A.

*Transportation Officer, Office of Civilian Requirements
War Production Board*

SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENTS

FOR THE DEGREE OF DOCTOR OF PHILOSOPHY

IN THE

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It goes without saying that the author alone is responsible for any errors of fact or of judgment which appear within.

W. N. LEONARD

WASHINGTON, D. C.
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CHAPTER I

INTRODUCTION

THE year 1920 marks a new departure in national policy towards railroad competition. In March of that year, after 26 months of government control, the railroads were returned to private management, and in order to compensate their owners and establish a basis for profitable and efficient operation in post-war years, Congress passed the Transportation Act of 1920. An outstanding feature of the new legislation was the encouragement given to consolidation: Section 5 directed the Interstate Commerce Commission to prepare and adopt a plan for the consolidation of the nation's carriers into a limited number of systems and, in addition, permitted individual roads to acquire other rail properties on their own initiative, in accordance with the Commission's plan.

The Transportation Act of 1920 brought to an end more than 30 years of governmental opposition to railway consolidation. Following the Civil War many states had sought by legislative action to prevent the union of competing carriers, and the federal government had written into the Act to Regulate Commerce of 1887 provisions designed to outlaw railroad pooling. The Sherman Act, the Clayton Act, and state laws of a similar character provided additional machinery for enforcing competition among railroads. On more than one occasion, the anti-trust laws were employed to break up combinations of railroad properties which were found to be in restraint of trade, and even those systems fortunate enough to escape the heavy stick of anti-trust prosecution were generally regarded by government and public alike with suspicion. There is no question that antitrust prosecutions and popular hostility toward large business organizations played an important part in checking railway combinations in the years immediately preceding the first World War.

It should not be inferred, however, that the Transportation Act of 1920 represented a complete reversal of governmental

attitude towards competition among railroads. In directing the Commission to prepare and adopt a consolidation plan, Congress set up certain conditions which limited the Commission's freedom of action. Competition, for instance, was to be preserved "as fully as possible" in the Commission's plan and existing routes and channels of trade were to be left intact wherever practicable. Moreover, the Commission was required to chart systems which would enjoy approximately the same earnings under a uniform system of rates. This last requirement reveals most clearly the thinking of the men who wrote the consolidation provisions of the Transportation Act. They regarded consolidation primarily as a tool for eliminating the disparity in returns of weak and strong roads under the same level of rates and as a means of saving the weak lines from imminent ruin.

However, the consolidation program soon encountered a number of unexpected obstacles. As early as 1921, the Commission published a tentative plan of consolidation based on the recommendations of Professor W. Z. Ripley of Harvard University, but at hearings held in Washington, D. C., and in various regional centers, the plan ran into a storm of objections from the carriers, to which were added the protests of state commissions, local commerce groups and other interested parties. So formidable was this opposition that the Commission became convinced of the impossibility of working out any acceptable consolidation plan and concluded that it would be better to permit the railroads to combine voluntarily, with continued supervision by the government. Accordingly, in 1925, the Commission asked Congress to be relieved of the responsibility of adopting a complete plan. This request was repeated in each of the three succeeding years, but to no avail. Congress failed to act upon this recommendation and in 1929 the Commission published a complete plan of consolidation.

In the meantime, the tentative plan was honored more in the breach than in the observance. Paragraph (2) of Section 5 permitted acquisitions of control by one carrier over another which

did not involve consolidation into a single system for ownership and operation, and the Commission followed a liberal policy in approving applications under this paragraph, many of which called for the taking over of strong lines and the formation of railroad combinations distinctly at variance with the systems projected in the tentative plan. Moreover, in many cases controls were effected by means of holding companies, which had not been covered by the provisions of Section 5, in violation of the tentative plan and everything Congress and the Commission had said regarding consolidation.

The complete plan itself had little effect upon the subsequent course of railroad integration. Hard times setting in after the market collapse of October 1929 reduced railroad traffic and earnings and produced a large crop of failures. Railroad combination was at a standstill, a situation which the Federal Coordinator labored hard to overcome during his term of office from 1933 to 1936, but without success. The handful of acquisitions approved during the 1930's bore no more relation to the complete plan than those of the 1920's had borne to the tentative plan. Moreover, during the lean years of the depression, resistance to consolidation on the part of railroad labor and rail communities was added to the opposition of railroad management, reducing still further the chances for a revival of consolidation activity. Finally, in 1940, Congress repealed the consolidation plan.

The study that follows traces the development of planned consolidation under the Transportation Act of 1920 until its termination in 1940. After a brief sketch of railroad combinations in earlier periods, an analysis is made of the considerations which prompted Congress to incorporate a consolidation program into the Transportation Act of 1920 and grant the railroads relief from the antitrust laws. The Commission's efforts to carry out the Congressional mandate are next described, with emphasis upon the hearings held from 1922 to 1924 in which the first major blows against planned consolidation were

delivered. The progress made by individual acquisitions, the subordination of the comprehensive plan in the interests of expediency, and the general miscarriage of planned consolidation during the twenty years of its trial, are recorded.

The story is largely one of failure, the failure of a well-intended but misdirected experiment. Not only did the consolidation plan remain merely a paper plan, but the evidence reveals that in no previous period of history of comparable length, did railroad consolidation make as little progress as under the Transportation Act of 1920. What were the reasons for failure? Should blame for failure be assigned to Congress, to the Interstate Commerce Commission, or to the carriers? Or was this a collective mistake? The answers to these questions are of interest, not only insofar as they involve this particular effort to accomplish a planned program of consolidation, but also to the extent that they indicate what steps must be taken in the future to perfect a workable plan of consolidation, should consolidation again be attempted on a national scale.

CHAPTER II

RAILWAY CONSOLIDATION BEFORE 1920

CHARACTERISTICS OF CONSOLIDATION

THERE is much disagreement as to what may properly be called a "consolidation." Legally the term refers only to those combinations in which two or more corporations unite to form an entirely new corporate entity which holds the assets and properties of the constituent companies. In this respect it is distinguished from a "merger," in which one company absorbs the assets of another without the formation of a new corporation.¹ The term "amalgamation" is sometimes used to apply to a combination of business units which forms a new company, and is thus synonymous with "consolidation" in its strict legal sense; there can be no doubt, however, that the latter is in general the broader term.² The process of consolidation usually involves an exchange of securities of the final company for those of the companies united in the consolidation. A similar result is produced by "purchase" of one company by another where the transaction is financed by additional sales of securities of the purchasing concern. In every case the end product is one company issuing its own securities, and in the process securities of all consolidated companies are extinguished.

In railroad enterprise there are, however, many situations which represent *de facto* consolidations, that is, where the act of combination results in one major company's using the property and determining the policies of one or more subsidiaries. For example, the "lease" of a railroad generally runs for a period of 99 or 999 years, and is as effective as if all of the lessor's property were actually owned by the lessee. An annual payment in cash is usually made to the lessor's security holders, and often

¹ For a discussion of cases distinguishing a "consolidation" from a "merger," see 30 *Columbia Law Review* 732 (1930).

² R. N. Owens, *Business Organization and Combination*, Prentice-Hall, New York, 1938, pp. 397-398.

the lessee guarantees the interest and principal of bonds, and a certain return on stock, of the lessor company. Closely related to the lease is the "operating agreement," which entitles one road to operate another's properties in return for a percentage of the latter's revenues. Though its life is shorter than that of the lease, the operating agreement creates a similar financial situation; that is to say, the result is the same whether a road receives 60 percent of another's gross receipts during a year's operation, or pays 40 percent of the minor road's annual earnings to it for a lease.³

An important medium of consolidation in its larger aspect is "financial control," which occurs where ownership of all, or part, of a company's stock vests control of its affairs in the owning corporation. Where railway shares have become particularly diffused in ownership, as they have in the past forty years, acquisition of only a small percentage of a company's outstanding stock may suffice for financial control. Quite often forms of control dovetail and interrelate: buying into the securities of another road will often provide the means of securing from it a lease or operating agreement; or the renewal of a lease or agreement already in effect may be ensured by acquisition of financial control. Sometimes a road will be operated or controlled by more than one carrier. Whatever the arrangement, the prime requisite for the existence of consolidation is that the minor company's policies be dictated and its properties employed by the major company. The Interstate Commerce Commission has held that the language of paragraph (6) of Section 5 of the Transportation Act of 1920, in which the term "consolidate" is used, is broad enough to cover any form of union under which "properties theretofore in separate ownership, management and operation pass into the possession of a single corporation for ownership, management and operation."⁴

3 G. P. Baker, *Formation of the New England Railroad Systems*, Harvard Univ. Press, Cambridge, 1937, p. xxvii.

4 *Securities Application of the P. & W. V. Ry.*, 70 I. C. C. 682, 684.

In "coordination," on the other hand, no financial combination occurs. Here the facilities of competing carriers may cooperate in offering transportation, but the companies retain their legal and financial identity. Companies performing the same services, for instance, two railroads, or part of their operations, may be coordinated, or operations of all railroads may be coordinated as in a national car pool. Though coordination may also be used to refer to the cooperative activities of different types of transport, such as a railroad and water carrier or an air line and bus line, the term will be employed in the following chapters only in connection with railroad operations. The Interstate Commerce Commission has differentiated between consolidation and coordination in the following manner :

"Consolidation", as the term is thus used, means an actual unification of companies under single ownership and control, so that they can be merged and operated as a unit. "Coordination", on the other hand, is used to describe cooperative action in a common interest at particular places or with respect to particular matters, but without actual unification of companies. Illustrations of coordination, now in effect, are the handling of all railway express service through the railroad-controlled Railway Express Agency, the handling of the railroad sleeping and parlor car service through the Pullman Company and numerous union stations and terminal companies.⁵

ECONOMIC BASIS OF CONSOLIDATION

To a considerable extent railroad consolidations are a result of the same forces which have produced large units in other fields of business. In order to meet growing demands upon them, local lines have merged to form extended rail systems operated by a single management. Through consolidation many roads have improved their competitive position, while others

⁵ *Annual Report of the Interstate Commerce Commission*, 1938, p. 15. See also E. R. Johnson, G. G. Huebner, G. L. Wilson, *Transportation: Economic Principles and Practices*, Appleton-Century, New York, 1940, pp. 641-642.

have protected themselves against loss of business to important rivals. Quite often the promotion of railway combinations has proved to be lucrative to "inside" groups. In these general aspects railway consolidation differs very little, if at all, from the combination movement in other industries.

The thing that set the railroad apart from other business enterprises at a rather early date was the unusual burden placed upon it by unbridled competition.⁶ Two important factors distinguished the railroad business: first, the high cost and degree of specialization of railway equipment; and, secondly, the large percentage of fixed costs that had to be met. So great were construction costs that considerable economic waste resulted if two roads were built where one could handle the traffic; abandonment of a road meant serious economic loss, since capital devoted to such a specialized use could not be withdrawn easily or in any large amount from the enterprise.

In a vest-pocket business the stoppage of trade causes most expenses to lapse. As Professor Hadley pointed out in a well-known passage:

If Grocer A sells goods below cost, Grocer B need not follow him, but simply stop selling for a time. For (1) this involves no great present loss to B. When his receipts stop most of his expenses stop also. (2) It does involve a present loss to A. If he is selling goods below costs, he loses more money the more business he does. (3) It cannot continue indefinitely. If A returns to paying prices, B can again compete. If A continues to do business at a loss, he will become bankrupt, and B will find the field clear again.⁷

⁶ Some railway managers seem to have been alive to the dangers of competition before the Civil War. President Thompson of the Pennsylvania Railroad reported in 1855 that a meeting of railway heads had taken place during the year "with a view to agreeing upon general principles which should govern railroad companies in competing for the same traffic and preventing ruinous competition." E. R. Johnson and T. W. Van Metre, *Principles of Railroad Transportation*, Appleton & Co., New York, 1930, p. 289.

⁷ A. T. Hadley, *Railroad Transportation*, G. P. Putnam, New York, 1885, p. 73.

Not so with a railroad. A large part of its costs are fixed, that is, they are tied up indissolubly with the original capital outlay to provide railway service, and these costs continue, irrespective of the volume of traffic carried. Not only are interest charges constant, but more than one-half of all operating expenses remain unaffected by the ebb and flow of trade. If these items are taken together, "a most conservative estimate shows that as much as sixty percent of a railroad's total annual expenses are fixed, and only forty percent variable. This means that if a railroad's traffic is doubled, only forty percent of its total expenses are doubled, and on the other hand if its traffic is cut in two, only forty percent of its expenses can be subjected to a fifty percent reduction."⁸

Consequently, when one road cuts rates below costs of service, its competitors will not go out of business. Instead, they will continue operations so long as a partial return on investment is obtained, so long, that is, as everyday out-of-pocket costs can be covered and something paid on the original capital borrowed. They "will take freight at almost any price which will pay for the men to load the goods and the coal to burn in the engine."⁹ During this period of less-than-cost-of-service operation, however, railroad property will be wearing down without adequate repairs and replacements; the value of rail securities will depreciate as losses mount, checking the flow of capital into the enterprise. Thus competition among railroads does not mean the elimination of the weak and inefficient; it means that if the contest is sufficiently prolonged, all the participants will be faced with ruin.

When a company has gone for some time without payment of outstanding fixed obligations and has been unable to attract new capital to provide for debt retirement or to meet current expenditures, the company may reorganize. In this process the capital structure is overhauled for the purpose of reducing fixed

⁸ T. W. Van Metre, *Transportation in the United States*, Foundation Press, Chicago, 1939, p. 229.

⁹ Hadley, *op. cit.*, p. 71.

charges, and this is quite generally accomplished by substituting bonds at lower interest rates for old bond issues, or by replacing bonds with stock. But even in bankruptcy, operations continue on the railroad; indeed, by lowering its fixed costs, a road may place itself in a position to wage the struggle on more favorable terms.

Intense competition, especially characteristic of American railway history, has repeatedly confronted the carriers with economic disaster, and repeatedly the carriers have reacted by consolidating. Often a carrier on the verge of insolvency has preferred the security of a lease or operating agreement, or an exchange of stock with a sound company, to protracted struggle. Or a strong road has decided to remove a dangerous rival from the scene or to strengthen its system before the next round of hostilities with other competitors. Out of a total of 226 railroad consolidations in New England between 1840 and 1890, Professor Baker finds a "desire to enter into competition and obtain traffic" the principal motive in 77, while "fear of loss" to rival carriers was responsible for 67. Thus competition was directly operative in 144 of these 226 cases, while it may have influenced 27 other consolidations in which a "desire for economy" was found to predominate.¹⁰

Dr. Julius Grodinsky argues that control of traffic has been the primary objective of railroads seeking to consolidate. In a lengthy analysis of the economic principles underlying consolidation, Dr. Grodinsky states:

The long haul and the friendly connection dominate the movement of interchange traffic; and each road in fighting for its share of available business must respect these two principles. Subject to notable exceptions, the large stakes in railroad consolidation are those of traffic interchange.¹¹

¹⁰ Fifty consolidations are classed as "natural extension of system"; four were motivated by a desire to make an "inside" profit; and three appear to have been profitable purchases of other roads. The last two groups are admittedly too low because of lack of information. Baker, *op. cit.*, pp. 263-264.

¹¹ Julius Grodinsky, *Railroad Consolidation, Its Economic and Controlling Principles*, D. Appleton & Co., New York, 1930, p. 131.

EARLY CONSOLIDATIONS IN THE UNITED STATES

The chief purpose of the earliest consolidations seems to have been to unite small connecting lines to form through routes between important terminals. The first railroads had necessarily been small in size because promoters could not accumulate the capital required for longer lines and because traffic was essentially local. But in 1853 ten small companies operating short links in a chain of roads between Albany and Buffalo received permission from the New York Legislature to combine their properties into the New York Central. Previously the traveler along this route had changed trains six times, presented seven tickets, and paid fares of from three to six cents a mile. He gambled on making connections between the various roads and considered himself fortunate to negotiate the trip in 30 hours. Shippers had to deal separately with the different carriers over this route and were often inconvenienced by delay and loss encountered in transferring goods at the numerous junctions. Under pressure from passengers and shippers, the managers of these lines first coordinated the train schedules so that time for the trip was reduced to 22 hours, then offered for sale through tickets between Albany and Buffalo and eventually took the step of uniting all the roads into one organization.¹²

Though the New York Central was the most important early consolidation, it was by no means the first union of connecting lines. In 1838 the Philadelphia, Wilmington & Baltimore absorbed the Wilmington & Susquehanna and the Baltimore & Port Deposit, to form a through route between Philadelphia and Baltimore. The Fall River Railroad came into being in 1845, with the consolidation of the Randolph & Bridgewater, the Middleboro and the Fall River Branch in Massachusetts. This line from Fall River connected with the Old Colony Railroad at South Braintree, from whence the latter's line ran on

12 A. Laut, *Romance of the Rails*, Tudor Publishing Co., New York, 1936, pp. 93-115. Also E. Hungerford, *Men and Iron: the History of the New York Central*, Crowell Co., New York, 1938, pp. 1-84.

to Boston, thus completing, with the aid of the Fall River Boat Lines, a rail-water route from New York to Boston.

Consolidation of connecting lines resulted in increased efficiency in the handling of traffic and was quite common in the years immediately preceding the Civil War. In 1854 three roads, the York & Maryland, the York & Cumberland and the Susquehanna, united to form the Northern Central Railroad, a line running from Baltimore to Sunbury, Pennsylvania. In the same year the managements of the Fall River and Old Colony roads, after considerable squabbling over rates on through traffic and after numerous threats to invade each other's territory, decided to settle their differences more economically by forming the Old Colony & Fall River Railroad. Consolidations appeared also in the West: the Pittsburgh, Ft. Wayne & Chicago developed from a union of the Ohio & Pennsylvania, the Ohio & Indiana and the Ft. Wayne & Chicago in 1856; and about the same time the Chicago, Burlington & Quincy came into being after merger of the Chicago & Aurora and the Central Military Tract. This series of consolidations seems to have reached a peak in 1857 and 1858. In the first of these years the Pennsylvania Railroad purchased the Main Line of Public Works from the State of Pennsylvania, obtaining, with the aid of some additional construction, a through route from Philadelphia to Pittsburgh. In 1858 the New York Central added five more lines to its system, and several important combinations occurred in New England which resulted in the formation of the Fitchburg, the Boston & Lowell and the Concord systems. All of these consolidations were logical developments in the creation of through routes.

For the most part, however, lines were short, generally not over 100 miles in length. The trunk line, the through route was the exception. Before the Civil War only one rail system—that of the New York Central—exceeded 1,000 miles in length, and its track, 1,300 miles in all, represented less than 4 percent of the nation's total railway mileage. The Pennsylvania Railroad was less than 700 miles in length, while the Illinois Cen-

tral, with slightly more than 700 miles of line, was one of the largest railways in the world.¹³

Among important reasons for the prevalence of the short lines were the opposition to consolidation of local interest groups and the legislative restrictions of various states. While each coast or river port endeavored to send rail feeders into the agricultural hinterlands in search of trade, these port rivalries often restrained, rather than forwarded, the development of through routes. Sometimes an unusual track gauge was adopted with the avowed design of impeding exchange of traffic with lines connecting with competing centers. Each board of managers established its own rate schedule, its own freight classification and traffic policy, and fought against agreements with other companies which involved joint use of track and interchange of cars.¹⁴ Localities often opposed consolidations which would make them way-stations instead of terminals. Only the rapid increase in traffic and the mounting inefficiency of segmented operation overcame this resistance.

Frequently these contests were removed to the floors of the state legislature, where special laws and grants of privileges might be obtained. Such legislative action was considered necessary by railway managers, for unless permission to consolidate with other roads was expressly contained in a road's charter, the combination was generally held to be illegal. Restrictions of this kind tended to confine a company's field of operations to the state of incorporation, and the securing of a charter in another state often proved an arduous task. The Boston & Maine had to be incorporated under a different name in each of the three states which it served, Massachusetts, New Hampshire and Maine.¹⁵ Management of a line from Pittsburgh to

¹³ W. Z. Ripley, *Railroads: Finance and Organization*, Longmans, New York, 1915, pp. 456-458.

¹⁴ F. A. Cleveland and F. W. Powell, *Railroad Finance*, Appleton & Co., New York, 1912, pp. 274-277.

¹⁵ Baker, *op. cit.*, p. 145 f.

Indianapolis remained divided because of the legal need of maintaining two companies, the Bellefontaine & Indiana in Ohio and the Indianapolis, Pittsburgh & Cleveland in Indiana. Not until 1864 were the two companies consolidated under one management.¹⁶ At other times state regulations added to the problems of connecting lines in their handling of through traffic. Fortunately, these statutory hurdles were for the most part cleared away after the Civil War, Congressional action coming largely as a result of difficulties found to inhere in moving men and materials over a series of short lines with awkward connections. A number of special bills providing for continuous routes were introduced into Congress, and in 1866 that body passed a law permitting all railroads to carry persons and property from one state to another, "and to connect with roads of other States so as to form continuous lines . . . to the place of destination," unrestricted by state action.¹⁷

MIDDLE PERIOD OF CONSOLIDATION

In the decades that followed the Civil War consolidation appeared on a new and grander scale. The immediate cause was the unparalleled construction of line and the bitterness of competition which highlighted railway development in the post-war period. The territory between the Atlantic seaboard and Chicago hummed with activity as large systems were formed to compete for east-west trade. In 1869 Cornelius Vanderbilt obtained control of the New York Central and combined this road with two downstate holdings, the New York & Harlem and the Hudson River Railroad. Frustrated in an ambitious attempt to consolidate the Erie with the New York Central, Vanderbilt turned westward, where he was able to acquire three lines in the region between Buffalo and Lake Michigan, namely, the Canada Southern, the Michigan Central and the Lake Shore & Michigan Southern. This established him in control of a continuous route of 978 miles of line between New York and

16 Vernon, *American Railroad Manual*, XIV, 66.

17 *U. S. Statutes at Large*, XIV, 66.

Chicago, operating under two separate organizations, the New York Central west of Buffalo and the Lake Shore & Michigan Southern from Buffalo to Chicago. To the south the Pennsylvania Railroad was making similar progress: in 1869 it secured a through route to Chicago by lease of the Pittsburgh, Ft. Wayne & Chicago and by an operating agreement with the Pittsburgh, Cincinnati & St. Louis, which held a lease on the Columbus, Chicago & Indiana Central. Another route to St. Louis was opened up in 1872 by the Pennsylvania, when the Terre Haute & Indianapolis, in which the Pennsylvania had a half-interest, leased the St. Louis, Vandalia & Terre Haute. At its eastern extremities the Pennsylvania Railroad pushed through New Jersey and secured an entrance into the New York City port area by leases on the Trenton Railroad Company and the United New Jersey Railroad and Canal Company. Its position in the Middle Atlantic region was challenged by other important trunk lines formed at about this time: the Baltimore & Ohio leased the Central Ohio in 1866 and the Sandusky, Mansfield & Newark in 1869, and reached Chicago in 1874 by extension of its lines from Ohio; and the Erie spread slowly westward by a lease of part, and later all, of the Atlantic & Great Western, but was unable to reach Chicago until the Chicago & Atlantic had been completed in 1883.

Periodically these systems in Middle Atlantic territory engaged in furious rate wars, marked by sharp rate-cutting, rebates and other discriminations. An important rate war occurred in 1874 when the roads were still suffering from the effects of the previous year's panic, and the conflict flared up intermittently after agreements among the railway heads to maintain rates broke down. At the same time the trunk lines, seeking to improve their respective competitive positions, added a number of bankrupt roads to their holdings. In the following decade the warfare was resumed, with rates dropping to new lows. This time the trunk lines sought to escape the threat of collective ruin by forming pools to share competitive business or to apportion the proceeds of such business.¹⁸

18 See the account in Hadley, *op. cit.*, pp. 82-99.

In the West construction, competition and consolidation reached epic proportions. The Union Pacific, constructed from Omaha to Ogden, Utah, as part of a through route to the Pacific Coast under the Pacific Railroad Acts of 1862 and 1864, enlarged its system by purchase of several roads to the south of its main lines. These roads, the Kansas Pacific, running from Kansas City to Denver, and the Denver Pacific, which connected Denver and Cheyenne, were forced upon the Union Pacific by Jay Gould's threat to extend his holdings to Salt Lake City, where a connection with the Central Pacific would have enabled him to cut off traffic from the Union Pacific. Construction of a line from Granger, Wyoming, to Huntington, Oregon, and later to Portland, and lease of the Oregon Railway & Navigation Company in 1887, tightened the Union Pacific's hold on western rail traffic. In the Northwest an important competitor appeared in the form of the Northern Pacific. After its completion from St. Paul to Portland in 1883 this road secured terminal facilities in Chicago by a lease of the Wisconsin Central in 1889. Still another rival of the Union Pacific appeared in the Northwest when James J. Hill's Great Northern reached Seattle in 1893.

In the Southwest a transcontinental route emerged in 1881 when the Santa Fe was extended from Kansas to Deming, New Mexico, where it formed connections with the Southern Pacific, a line built from the West Coast by the owners of the Central Pacific. Previously the Santa Fe had purchased a half-interest in the Atlantic & Pacific which brought it to Needles, Arizona; eventually it obtained complete control of the Atlantic & Pacific and built and consolidated its way into Southern California. By 1886 the Santa Fe had stretched its tracks to the Gulf at Galveston by purchase of the Gulf, Colorado & Santa Fe; two years later it was in Chicago. Meanwhile the Southern Pacific, restive under an agreement with the Gould-controlled Texas & Pacific, over whose lines it reached the Gulf, acquired the Galveston, Harrisburg & San Antonio in 1882, thus completing a rail line

from San Francisco to New Orleans. From this last-named port it operated ship lines to New York and other East Coast cities.

Western railroads not only competed in strenuous rate wars but engaged also in battles for possession of canyons, passes or river crossings. Occasionally armed bands were sent by the rival companies to attack or hold these strategic bits of topography, possession being considered at least "nine points of the law."¹⁹ But competition as diverse and bitter as this was particularly dangerous for the western roads, since most of these companies had undertaken extensive construction projects through territories whose sparse settlement and undeveloped economic resources denied satisfactory returns. Some efforts to maintain rates were made through the device of pools: in the Midwest the Omaha pool and in the South the Southern Railway & Steamship Association succeeded for a while in putting a floor under rates. But the inability of these associations to enforce agreements impeded their effectiveness and in the end consolidation proved a more reliable method of checking competition.

In this era of energetic construction and intense competition a startling number of consolidations were effected. The Interstate Commerce Commission reported a total of 425 consolidations in the nine-year period from 1880 through 1888, or an average of 47 a year.²⁰ A peak of 115 was registered in 1880, and the low for the period was 1884 when only 20 completions were reported. Of the 425 companies which lost their independence during these years, leases, operating agreements and financial control accounted for 242; the figures show that 143 were absorbed by merger and consolidation, and 40 were purchased outright.²¹ Among the consolidations given prominent

¹⁹ For an account of western railroad rivalries, see R. E. Riegel, *Story of the Western Railroads*, Macmillan, New York, 1926, pp. 179-194.

²⁰ *Annual Report of the Interstate Commerce Commission*, 1889, pp. 77-79.

²¹ The lease appears to have been the favorite mechanism for achieving consolidation. Of 226 combinations effected in New England from 1840 to 1890, 111, or nearly half, used this arrangement. Baker, *op. cit.*, pp. 255-256.

The lease seems to have suited the lessor because of guaranteed returns,

mention by the Commission were the Pennsylvania Railroad, which in 1890 represented a combination of some 83 companies with 7,500 miles of line; and the Chicago & North Western which had increased its mileage from 120 in 1859 to 4,250 in 1880. More than 3,700 of the North Western's added miles had been obtained through consolidation. The extent of the movement throughout the country is shown by the fact that of 1705 railroad companies in existence in 1890, only 600 were independent.²² Roughly speaking, one-third of the nation's railways controlled the other two-thirds.

This trend towards consolidation developed in the face of ever-increasing hostility on the part of federal and state governments. Many states, particularly those in Midwest or "Granger" territory, passed laws forbidding the combination of competing lines. Nevertheless, by special legislative permission, or by evasion, many railroads circumvented these restrictions. In 1885 the New York Central acquired the West Shore Railroad which skirted the west bank of the Hudson River and the Erie Canal all the way from New York to Buffalo, only a few miles from the Central's main line; and two years later Vanderbilt, through his subsidiary, the Lake Shore & Michigan Southern Railroad, purchased control of the Nickel Plate which paralleled the latter's line end to end. Political action on a national scale, however, was not long in developing. The desire to preserve competition among railroads resulted in the insertion in the Act to Regulate Commerce, passed by Congress in 1887, of a clause prohibiting the formation of railroad pools. This came just at a time when effective machinery for the enforcement of pooling agreements was being established in several leading pools. It compelled the carriers to resort to other devices to

and because failure of the lessee road did not constitute a loss. To the managers of the lessee road it gave an opening wedge for later purchases of financial control. Another important consideration restricting the scope of consolidation was the lack of available capital.

²² *Annual Report of the Interstate Commerce Commission*, 1890, p. 58.

maintain rates and apportion competitive traffic, principally the traffic associations and consolidations.²³

A more direct attempt to ensure competition was made in the Sherman Antitrust Act of 1890, which declared illegal "every combination . . . in restraint of trade or commerce among the several states."²⁴ Two decisions during the late 1890's held that the Sherman Act's provisions applied to railroads and found agreements of traffic associations, whether reasonable or not, in violation of the Act.²⁵ While these decisions did not bring an end to traffic associations, they gave added incentive to the search for effective and legal methods of escaping the unpleasant consequences of intense competition. This search led unerringly to consolidation.

THIRD PERIOD OF CONSOLIDATION

The last decade of the 19th Century witnessed an unparalleled wave of consolidations. To this movement the financial instability of the times gave sharp stimulus. The panic of 1893, which terminated the prosperity of the late eighties and early nineties, struck the railroads with especial fury. By June 1894, one-fourth of the country's rail mileage was in the hands of receivers;²⁶ and the list of failures grew to include such outstanding systems as the Erie, Union Pacific, Northern Pacific, Santa Fe and Baltimore & Ohio. To this record of insolvency excessive competition had in no small way contributed, and railway managers and bankers participating in reorganization were determined to prevent a repetition of the anarchy of the previous two decades. On the positive side, the lure of profits resulting from the promotion of these new and larger corporations and from the establishment of traffic monopolies gave

²³ D. P. Locklin, *Economics of Transportation*, Business Publications, Chicago, 1938, pp. 310-315.

²⁴ *U. S. Statutes at Large*, XXVI, 209.

²⁵ *U. S. v. Trans-Missouri Freight Association*, 166 U. S. 290 (1897); *U. S. v. Joint Traffic Association*, 171 U. S. 505 (1898).

²⁶ *Interstate Commerce Commission Statistics*, 1894, p. 10.

added impetus to consolidation. Greater availability of capital increased possibilities for financial penetration and manipulation, and several new means of securing control became prominent. First, the "holding company" set up to own and deal in securities of subsidiary corporations. Second, the "interlocking directorate," where directors sat on the boards of several companies and coordinated their policies. From the standpoint of railroad consolidation, however, a third form of control, the "community of interest," was most significant. The last—actually a combination of the first two techniques—could be said to exist when competing railroads purchased stock in each other sufficient to secure in each case representation in the board of directors of its competitors and assure working cooperation among the companies in the same area.

Unlike the consolidation movement, which in earlier years had enabled many roads to enter more effectively into competition, the series of mergers which began in the later 1890's were aimed, not merely at the restriction of competition, but at its virtual suppression. In 1899 President Cassatt of the Pennsylvania Railroad pioneered a community of interest in the East by entering into a complex arrangement with the Vanderbilt and Morgan interests by which stability in the Middle Atlantic territory was achieved. In general, this understanding provided that the Pennsylvania assume control of several reorganized roads which tapped important soft-coal areas, including the Baltimore & Ohio, the Chesapeake & Ohio and the Norfolk & Western. The New York Central and the Cleveland, Cincinnati, Chicago & St. Louis ("Big Four"), acquired by the New York Central in 1898, made large purchases of Chesapeake & Ohio securities. Through the Baltimore & Ohio the Pennsylvania gained control of the Reading and sold a half-interest in the latter to the Lake Shore & Michigan Southern, subsidiary of the New York Central. Following its reorganization by Morgan the Erie came into the family with a fraternal exchange of interests. In the coal fields harmony was assured by a system

of interlocking directorates among the leading trunk-line roads. After an investigation of this complex community of interest, the Interstate Commerce Commission remarked:²⁷

The extraordinary concentration of railway interests shown in the situation on the Middle Atlantic seaboard would lead to the conclusion that, so far as this group of railways is concerned, competition has been practically eliminated; for the motive that would lead to the fostering of such a policy has disappeared.

The New Haven Railroad demonstrated the use of the holding company in securing domination of a particular traffic territory. As far back as 1893 the New Haven, enjoying a virtual monopoly of rail transportation in southern New England, had entered into a scheme to divide up the region with the Boston & Maine, which held a similar position in northern New England. According to the terms of the agreement, neither road was to invade the other's territory, and provisions were also included covering interconnections and division of receipts on joint hauls. Morgan's presence on the New Haven's board of directors and his connections with the Vanderbilts, who controlled the Boston & Albany, assured harmonious relations with the latter road which separated the two systems. The peace which descended upon the railways of this region lasted seven years and was shattered only when the New Haven embarked upon an ambitious program of expansion in the opening years of the twentieth century. First, access to the Middle Atlantic and Great Lakes regions was secured by purchase of a controlling interest in the New York, Ontario & Western and later the Rutland Railroad. A second important development was the formation, in 1907, of the Massachusetts Holding Company, part of whose securities were exchanged for control of the Boston & Maine. Four years later an agreement with the New York Central gave the New Haven an equal share in all profits

²⁷ *Interstate Commerce Commission Report on Intercompany Relationships of Railways in the U. S. as of June 30, 1906 (1908)*, p. 40.

and losses of the Boston & Albany, completing the monopoly of rail transport in New England. But the New Haven combination did not end there: its holdings grew to include, not only rail lines, but trolley systems in Connecticut, Rhode Island and Massachusetts, and approximately 90 percent of all New England coastwise shipping.²⁸ Absolute control of all transport in the area was in sight in 1914 when threat of an antitrust suit compelled the New Haven to dissolve its holding company and to relinquish its acquisitions one by one.

Community of interest brought relief to another stricken area—the railroad systems of the South. Three new rail groups evolved and developed close relations: The Southern Railway, the Atlantic Coast Line and the Seaboard Coast Line. The first of these, reorganized by Morgan in the 1890's, increased its operations from 4,391 miles in 1896 to more than 7,500 miles in 1908 through a series of mergers. The Atlantic Coast Line was formed in 1889 by consolidation of four coastal railways, the Fredericksburg & Potomac, the Wilmington & Weldon, the Charleston & Western Carolina and the Wilmington, Columbia & Augusta. In 1902 the Atlantic Coast Line doubled its size by adding the Savannah, Florida & Western Railway and in the same year purchased control of the old and powerful Louisville & Nashville. The Southern Railway held a large interest in the Atlantic Coast Line—also known as a Morgan road—and the two railways were jointly interested in many lesser lines. The third system in the area—the Seaboard Air Line—was smaller than its two competitors, having only 2,600 miles of line. It had been formed as the result of an effort of small roads in the territory to protect themselves against growing power of the large systems.²⁹ The three Southern systems worked in unison: they operated several lines jointly, including the Chicago, Indianapolis & Louisville, which gave them an outlet to Chicago. Together with the roads in the Pennsylvania combination the

²⁸ Ripley, *op. cit.*, pp. 466-473.

²⁹ Slason Thompson, *A Short History of American Railways*, Appleton & Co., New York, 1925, p. 275.

Southern systems held control of the Dominion Steamship Company.³⁰

In the West a far-reaching community of interest was established by James J. Hill and Edward H. Harriman and supported by the ubiquitous J. P. Morgan. During the reorganization of the Northern Pacific, Hill perceived the opportunity of combining the latter with his own Great Northern; after some skirmishing Morgan, who had charge of the reorganization, assented to the plan. Balked by a Minnesota law which forbade the combining of parallel and competing lines,³¹ Morgan and Hill took possession of the roads through stock ownership as "individuals," and sought to add to their holdings by purchasing control of the Chicago, Burlington & Quincy, an important Granger road which owned Chicago entrances needed by their northwest system. At this point, however, they encountered opposition in the person of Harriman, head of the reorganized Union Pacific and of a system which had grown by stock purchase to include the Southern Pacific and the latter's subsidiary, the Central Pacific. Harriman, too, desired a Chicago entrance and feared diversion of traffic from his lines should the Burlington fall into the hands of his rivals. These competing interests entered into a momentous struggle for control of the Northern Pacific (which held a half-interest in the Burlington), which ended only when the antagonists pooled their interests by chartering the Northern Securities Company,³² a giant hold-

30 *Interstate Commerce Commission Report on Intercompany Relations of Railways of the U. S. as of June 30, 1906* (1908), pp. 40-41.

31 Sustained by the U. S. Supreme Court in *Pearsall v. Great Northern*, 161 U. S. 646 (1896).

32 By May 1, 1901, Harriman held \$41,000,000 of \$75,000,000 preferred and \$37,000,000 of \$80,000,000 common stock in the Northern Pacific. This left him short of control, since Morgan and Hill had bought up the remaining common stock. Moreover, they could retire the preferred stock—at great expense, of course—at the next board meeting. With a market crisis threatened because many traders had sold Northern Pacific short, the rivals compromised by forming the Northern Securities Company, its capital stock of \$400,000,000 representing 76 percent of the Northern Pacific and 96 percent of the Great Northern stock. A full account of this financial epic is found in B. H. Meyer, *History of the Northern Securities Case*, Bulletin 142, Univ. of Wisconsin, Madison, 1906.

ing corporation in control of the Great Northern, Northern Pacific and Burlington. Though the company itself was held to be a combination in restraint of trade under the Sherman Act,³³ and subsequently disintegrated, community of interest remained. Hill's 20,000 miles of line worked harmoniously with Harriman's system of lines—another 25,000 miles—forming a community of interest which included the Southern Pacific ship lines as well as other Pacific coastal and trans-oceanic steamship routes. The Santa Fe entered the community in consequence of a strategic stock purchase by Harriman and the appointment to its board of directors of two Union Pacific men. Gould's western roads, principally the Missouri Pacific, Texas & Pacific, Denver & Rio Grande and Missouri, Kansas & Texas, were brought to terms: an interchange of directors took place between the Denver & Rio Grande and Union Pacific, and cordiality was maintained until Gould began the construction of an independent outlet to the Pacific. With this one exception, law and order in the community were scrupulously observed. In 1915 Professor Ripley commented that "since the dissolution of the northern transcontinental monopoly in 1905, no outward change, so far as the public is concerned, is apparent. Harmony in rate policy has been unbroken; and in all subsequent changes of rates, all roads have acted practically as a unit."³⁴

Interregional alignments of interests and systems also made their appearance. Both Hill and Harriman sat on the board of directors of the Baltimore & Ohio. The New York Central was dominant in the affairs of the Chicago & North Western, whose board also included four Union Pacific men; and the Union Pacific-Northwestern-New York Central route was the shortest and speediest from coast to coast. Harriman strengthened his control of the Illinois Central, and in 1909 added the Central of Georgia to his holdings, thereby obtaining a transcontinental route from Seattle and San Francisco on the Pacific Coast,

33 *U. S. v. Northern Securities Co.*, 193 U. S. 197 (1904).

34 Ripley, *op. cit.*, p. 499.

through St. Louis, to Savannah on the Atlantic Seaboard. The Goulds attempted to piece together a transcontinental route by construction and consolidation: the Western Pacific extended the system to San Francisco, and at the eastern end the Wabash, Wheeling & Lake Erie and Western Maryland were acquired in an effort to reach the Atlantic. This project collapsed, however, largely as a result of costly construction and imprudent management. Another sprawling combination was formed by the Moore-Reid interests: with the Rock Island as a base, these promoters added the Choctaw, Oklahoma & Gulf, the St. Louis & San Francisco ("Frisco"), the Chicago & Eastern Illinois and the Chicago & Alton. When this structure toppled,³⁵ several of its parts were picked up by a Yoakum-Hawley group and loosely joined together in the form of a system. The latter aggregation of roads comprised, at one time or another, the Chesapeake & Ohio, the Hocking Valley, the Chicago, Indianapolis & Louisville, the Iowa Central, the Toledo, St. Louis & Western, the Frisco, and the Chicago & Eastern Illinois.

Unquestionably this period witnessed the greatest development of consolidation in American railway history. At the very outset a fast pace was set: the Interstate Commerce Commission found that in the sixteen months between July 1, 1899, and November 1, 1900, some 25,311 miles of railway—one-sixth of the nation's total railway mileage—had been absorbed by other roads.³⁶ In 1902 nineteen systems controlled 168,321 miles of line, or 81 percent of the total, while eight systems had 128,881 miles or 63 percent.³⁷ In 1896 one-fifth of all outstand-

³⁵ Threats of prosecution under the Sherman Act may have contributed to the separation of the Rock Island and Frisco (the latter was sold to the Yoakum-Hawley interests in 1909); but the drain of the Frisco on the Rock Island's strength was probably a more important factor. Stuart Draggett, *Railroad Consolidation West of the Mississippi River*, Univ. of California Publications, Vol. II, no. 2, Berkeley, 1933, 238-239.

³⁶ *Annual Report of the Interstate Commerce Commission*, 1900, p. 11.

³⁷ E. R. Johnson, *American Railway Transportation*, Appleton, New York, 1903, pp. 62-63.

ing railroad stock was in the hands of other roads;³⁸ by 1906 the proportion was nearly one-half.³⁹ In the latter year Harriman's interests alone—25,000 miles of line controlled outright, substantial holdings in 30,000 more and investments in 16,000 additional miles of road—placed a third of the nation's railroad mileage under the control and influence of one man. So far had financial penetration gone that the country's railways might be said to be dominated by four groups: the Morgan-Hill alliance, Harriman, Vanderbilt and the Pennsylvania interests. These groups were interrelated and often worked in close co-operation, as, for example, the Morgan and Vanderbilt interests in the East. If to the interests of these four groups are added the roads in the Moore-Reid and Gould systems, the total represented "nearly 95 percent of the vital American steam railroad lines."⁴⁰

For a while it seemed likely that the railroads of the United States would be consolidated into a few great systems stretching across the country, under the control of a small number of important capitalists. Even consolidation into a single system was not considered out of the question. As far back as 1891, Collis P. Huntington, one of the builders of the Central Pacific and the Southern Pacific, had written:

I am satisfied that the best results will not be reached until substantially all the transportation business of this country is done by one company. . . . What is wanted is not more than two or three—and one would be better—great carrying companies.⁴¹

³⁸ *Interstate Commerce Commission Statistics of Railways in the U. S.*, 1902, p. 54.

³⁹ *Interstate Commerce Commission Report on Intercorporate Relationships of Railways in the U. S. as of June 30, 1906* (1908), pp. 36-37.

⁴⁰ John Moody, *The Truth About the Trusts*, Moody Publishing Co., New York, 1904, p. 431.

⁴¹ C. P. Huntington, "Plan for Railway Consolidation," *North American Review*, CLIII, 277-278. In 1887 he had testified to similar effect before the U. S. Pacific Railway Commission.

Several years later, G. H. Lewis, a Des Moines lawyer, proposed in a book on railroad consolidation that all the country's lines be merged in one great system under joint management and control of government and private interests.⁴² A nationwide transportation monopoly was the ambition of at least one railroad man: testifying in 1906 before the Senate Committee on Interstate Commerce, Edward H. Harriman stated that only the antitrust laws could come between him and the absorption of the Sante Fe, other transcontinental and trunk lines, and any other roads which he thought worth taking over.⁴³ In one sec-

42 G. H. Lewis, *National Consolidation of the Railways of the U. S.*

43 On November 15, 1906, the Interstate Commerce Commission on its own motion initiated an inquiry into the activities of Harriman. The investigation purported to be a general study of "Consolidations and Combinations of Carriers" but practically no attention was paid to anyone but Harriman. He was asked what his attitude was toward purchase of control in other roads.

A. I would go with it. If I thought we could realize something more than we have got from these investments I would go on and buy some more things.

Q. Supposing that you get the Santa Fe?

A. You would not let us get it.

Q. How could we help it?

A. How could you help it? I think you would bring out your power to enforce the conditions of the Sherman Antitrust Act pretty quick. If you will let us, I will go and take the Santa Fe tomorrow.

Q. You would take it tomorrow?

A. Why, certainly I would; I would not have any hesitation; it is a pretty good property.

Q. Then it is only the restriction of the law that keeps you from taking it?

A. I would go on as long as I live.

Q. Then after you had gotten through with the Santa Fe and had taken it, you would also take the Northern Pacific and Great Northern if you could get them?

A. If you would let me.

Q. And your power, which you have, would gradually increase as you took over one road after another, so that you might spread not only over the Pacific Coast but spread out over the Atlantic Coast?

A. Yes.

In the Matter of Consolidations and Combinations of Carriers, Relations Between Such Carriers, and Community of Interests Therein, Their Rates, Facilities, and Practices, 12 I. C. C. 277, p. 280 (1907).

tion of the country, New England, where density of population and decentralized industry presented excellent opportunities for the purpose, combination, not merely of railroads, but of every form of transport was practically complete in 1914.

At this very moment, however, there appeared several factors which checked the growth of railroad consolidation. The Panic of 1907 terminated the ten-year period of prosperity during which the combination movement had enjoyed its greatest growth, and as a result of the market collapse and continuing unsettled financial conditions, many roads became insolvent. The number of bankruptcies mounted until in June 1916, 94 roads representing more than 30,000 miles of line, were in receivership.⁴⁴ With the deterioration of business conditions many systems which had been engaged in campaigns to extend their control of other transportation companies began to crack up. Outstanding examples of this were the Rock Island and New Haven systems, to whose disintegration speculative mismanagement contributed. Bad management also figured in the collapse of the Gould system, which was caught by the Panic of 1907 with several costly construction projects on its hands.⁴⁵ The Wheeling & Lake Erie and the Western Maryland entered receivership in 1908, the Wabash in 1911, and between 1915 and 1917 the western end of Gould's system fell apart, with the Missouri Pacific, Western Pacific and Denver & Rio Grande bankrupt.

Railway financial structures in general had become increasingly shaky as the result of a disproportionate increase in long-term debt. The plethora of bonds marketed during the reorganizations and boom market conditions of the late nineties and first years of the new century had boosted capital indebtedness and particularly funded debt: the amount by which bonded obligations exceeded capital stock grew from \$165,000,000 in 1890 to \$2,929,000,000 in 1918, or by 1,675 percent in less

⁴⁴ Interstate Commerce Commission, *Statistics of Steam Railways of the United States*, 1916, p. 10.

⁴⁵ Ripley, *op. cit.*, pp. 531-532, 518-524, 250-258.

than 30 years. Within this period total capitalization increased 137 percent, capital stock 108 percent, and funded debt 165 percent.⁴⁶ This general inflation of capital structure and gain in fixed charges produced periodical slumps in stock prices and dampened the confidence of investors in rail securities, thus closing channels of credit for expansionist activities.

Another major reason for the decline of consolidation was the anti-monopoly and anti-railroad sentiment of the public, backed up by the "big stick" of the antitrust laws. The cases of the Northern Securities Company and the New Haven monopoly have already been mentioned. At the same time other actions were brought under the Sherman Act against railroad combinations, particularly the empire presided over by Edward H. Harriman. Successful prosecution of the Northern Securities Company had reduced Harriman's control of western systems, if not his wealth and personal power. In 1907 another suit was begun to separate the two main pillars of the Harriman rail system—the Union Pacific and the Southern Pacific. In the decision in this case,⁴⁷ two problems of railroad monopoly were solved by one exchange of interests: the Pennsylvania traded substantial holdings in the Baltimore & Ohio for a bloc of Southern Pacific stock held by the Union Pacific. In 1914, the Federal Government started an action to compel the Southern Pacific to relinquish control of the Central Pacific, a road held by it since 1868, and succeeded in 1922 in obtaining a separation order.⁴⁸ However, passage of the Transportation Act of 1920 had vested control over consolidation in the Interstate Commerce Commission, relaxing the stringencies of the antitrust laws, and the Southern Pacific was subsequently permitted to retain control of the Central Pacific.⁴⁹

46 E. G. Campbell, *Reorganization of the American Railroad System, 1893-1900*; Columbia University Press, New York, 1938, p. 322.

47 226 U. S. 61 (1912).

48 259 U. S. 2 (1922).

49 *Control of Central Pacific by Southern Pacific*, 76 I. C. C. 508 (1923).

In the East community of interest gradually dissolved before the threat of government action. In 1906 the Pennsylvania and the New York Central canceled the agreement which provided for joint control of the Chesapeake & Ohio and both railroads disposed of their holdings through Kuhn, Loeb & Co. to a syndicate headed by Edwin Hawley in which the Huntington family had an important interest.⁵⁰ However, the Pennsylvania retained its control of the Norfolk & Western, though by 1914 its stock interest had been reduced to 38 percent of the total. The New York Central and the other eastern roads which had participated in the control of the Lehigh Valley sold their stock in this road through J. P. Morgan & Co. to friendly interests. In 1910 the New York Central sold its share in the Hocking Valley to the Chesapeake & Ohio and received in return the Toledo & Ohio Central; the transaction gave the Chesapeake & Ohio a route to Lake Erie and the Central a foothold in the West Virginia coal fields. The New York Central and the Baltimore & Ohio continued to share control of the Reading and the Central of New Jersey.

On October 15, 1914, the Clayton Act was passed, Section 7 of which prohibited corporations engaged in interstate commerce from acquiring stock in any other company in interstate commerce, if competition would be substantially diminished thereby.⁵¹ However, this section was not invoked against the railroads until after the passage of the Transportation Act of 1920.⁵²

Despite financial instability and government opposition, the consolidation movement had gone too far to be suddenly reversed. Many of the stock disposals forced by bankruptcy, court decree and fear of prosecution under the antitrust laws had been *intra partes*. Moreover, reorganization and transfers of securi-

⁵⁰ The passing of community of interest in the East is discussed in *Railroad Combination in the Eastern Region*, Senate Report No. 1182 (76th Cong., 3rd Session.), 1940, Part I, pp. 61-71.

⁵¹ *United States Statutes at Large*, XXXVIII, 731-732.

⁵² See Chapter VI.

ties enabled the bankers, particularly J. P. Morgan & Co. and Kuhn, Loeb & Co., to strengthen their hand in railroad affairs. One study indicated that in 1915, ten railroad groups accounted for 174,229 miles of line, or approximately 70 percent of the country's entire mileage, and five of these groups controlled more than half the total mileage.⁵³ In order of importance these groups were:

<i>Group</i>	<i>Mileage</i>	<i>Percent of Total</i>
Union Pacific-Southern Pacific group	34,543 miles	13.7
Morgan interests	29,407 miles	11.7
Hill interests	28,053 miles	11.1
Vanderbilts	23,675 miles	9.4
Pennsylvania interests	13,834 miles	5.5
Santa Fe system	11,546 miles	4.6
Chicago, Minneapolis & St. Paul	10,442 miles	4.1
Rock Island system	8,330 miles	3.3
Missouri Pacific	7,294 miles	2.9
New Haven	7,105 miles	2.8
Total	174,229 miles	69.1

E. H. Harriman and the younger Gould were dead, and their systems disrupted, the first by antitrust prosecution and the second by bankruptcy. The Rock Island system and the New Haven had passed into receivership. In the East the Vanderbilt-Cassatt community of interest had faded and by 1916 new forces, led by the Van Sweringens, had invaded the railroad field and were subsequently to reshape it.⁵⁴ But the need to restrict competition and the ambitions of individual railroad executives, bankers and promoters remained as factors conducive to the further growth of combinations. After the World War and the passage of the Transportation Act of 1920, there began a new chapter in the history of railroad consolidation.

⁵³ E. R. Johnson and T. W. Van Metre, *Principles of Railroad Transportation*, Appleton, New York, 1917, pp. 90-92.

⁵⁴ See Chapters VI and VII.

CHAPTER III

THE TRANSPORTATION ACT OF 1920

FEDERAL OPERATION OF THE RAILROADS

THERE is evidence to indicate that the issue of consolidation was involved at the very beginning of government operation of the railroads during the first World War. On December 5, 1917, the Interstate Commerce Commission declared in a special report to Congress on the railroad situation that operation of the roads as a unit was indispensable to their complete utilization during the national emergency.¹ This objective, the Commission observed, could be achieved in two ways: first, by the railroads acting together on a voluntary basis; and, second, by use of presidential powers to assume control of the railroads during an emergency. In a separate report Commissioner McChord asserted that only the second measure could attain the required efficiency of rail movement.

When it became apparent in the last weeks of 1917 that increasing traffic congestion threatened a complete breakdown of railroad operations, President Wilson moved to take over the carriers. He announced his intention in a message to Congress on December 26, 1917, and appointed William G. McAdoo, Secretary of the Treasury, Director General of the United States Railroad Administration with "paramount authority" in all matters pertaining to railroad transportation. In a later message the President urged Congress to enact legislation providing for government operation of the railroads during the emergency period, and such legislation, known as the Federal Control Act, was passed on March 21, 1918.² Although a major part of the Act dealt with such matters as compensation to the owners of the railroads, determination of rates and appropriations to defray federal expenses, one provision sought to stabilize the rail-

¹ *Annual Report of the Interstate Commerce Commission*, 1918, pp. 4-9.

² *United States Statutes at Large*, XL, 451-458.

road situation by permitting the courts, at the instigation of the Department of Justice, to stay execution of final judgment in antitrust suits. Federal control, as stated in the Act, was not to continue more than one year and nine months after the end of the war.

The first order of the Director General, issued December 29, 1917, placed railroad operations on a national basis, and stated that the common needs were in all instances to be considered paramount to any actual or supposed corporate advantage.³ This order and successive measures adopted by the Railroad Administration attempted to secure fuller utilization of equipment, more effective use of terminals and port areas and expedited freight movement. However, it soon became evident that, while improvements could be made in the collective use of cars and locomotives, in the case of terminals and ports, private facilities in existence could not always be converted to the common use of a number of carriers. Still, some gains were achieved in this direction. More efficient rail service was ensured by the elimination of circuitous routes, standardization in the construction of freight cars and locomotives, adoption of a system of uniform freight classification, and the establishment of consolidated ticket offices. Without arguing the merits or demerits of federal operation of the railroads during World War I, it may safely be said that the government's ability to keep traffic moving and to adapt the rail system to wartime needs was in no small measure due to steps taken to assure unified railroad operation.⁴ So impressed was the Commission with the results of consolidated control that their annual report for 1918 recommended that consolidation be made a part of national policy, not only in war but in peacetime as well. The Commission stated:⁵

3 General Order No. 1, Office of the Director General, December 29, 1917.

4 Federal control "not only did not cost more than private control would have cost during the same period but cost considerably less on account of the economies growing out of unifications...." Report of Director General Hines to the President, February 28, 1920, p. 45.

5 *Annual Report of the Interstate Commerce Commission*, 1918, p. 2.

Whatever line of policy is determined upon, the fundamental aim or purpose should be to secure transportation systems that will be adequate for the nation's needs even in time of national stress or peril and that will furnish to the public safe, adequate and efficient transportation at the lowest cost consistent with that service. To this end there should be provision for (1) the prompt merger without friction of all the carriers' lines, facilities and organizations into a continental and unified system in time of stress or emergency; (2) merger within proper limits of the carriers' lines and facilities in such part and to such extent as may be necessary in the general public interest to meet the reasonable demands of our domestic and foreign commerce.

With the signing of the Armistice on November 11, 1918, the Administration was faced with the necessity of making some disposition of the carriers. President Wilson, occupied with international affairs, tossed the problem into the lap of Congress. In a message delivered December 2, 1918, the President declared that it would become his duty to return the roads to private management at the end of the following year unless Congress mapped out an alternative course of action in the meantime, and voiced the opinion that return of the carriers without changes in regulation would be undesirable from the viewpoint of the public and the rail owners alike.⁶ This presidential statement served to open the floodgates of discussion on railroad policy. Newspapers filled their pages with comment on the rail situation; many organizations held meetings to consider what ought to be done with the carriers; and resolutions, petitions and plans dealing with the railroad problem poured into Washington. Hearings on "Extension of Tenure of Government Control of Railroads" were held by the Senate Committee on Interstate Commerce from January 3 to February 21, 1919, and much more lengthy hearings were conducted by the House Committee on Interstate and Foreign Commerce from

⁶ Annual Message of the President of the United States to a Joint Session of the Senate and House of Representatives, December 2, 1918.

July 15 to October 4, 1919, on a bill to return the railroads to private ownership.⁷ The record of these hearings and the account of subsequent Congressional debate provide the best source of information on the policies incorporated in the Transportation Act of 1920.

HEARINGS ON THE TRANSPORTATION ACT OF 1920

The most urgent question to be decided by Congress was: What shall be done with the railroads? Generally speaking, Congress had to choose between three courses of action: (1) return of the roads to private management; (2) government ownership; (3) continuation of government control. The latter policy was favored by Secretary McAdoo and by Walker D. Hines, who succeeded McAdoo as Director General of Railroads, because it would provide a test of government control under "normal" conditions.⁸ However, this proposal failed to attract any considerable public support. On the other hand, return of the roads to private management received the endorsement of the Interstate Commerce Commission, the Association of Railway Executives, the National Association of Owners of Railway Securities, the National Transportation Conference, the National Industrial Traffic League, the National Association of Manufacturers and the United States Chamber of Commerce. Government ownership of the carriers had the support of organized labor and a few other groups but was roundly condemned by a majority of organizations and individuals. Dissatisfaction with government operation, with increases in rates, with the debt created during the period of federal control—in

⁷ Hearings before the Senate Committee on Interstate Commerce on Extension of Tenure of Government Control of Railroads, Vol. I; Hearings before the House Committee on Interstate and Foreign Commerce on Return of the Railroads to Private Ownership, Vols. I, II and III (66th Cong., 1st Sess.), 1919.

⁸ Although Secretary McAdoo claimed presidential support for this policy, President Wilson's message to Congress on December 2, 1918, had appeared to favor resumption of private operation at the end of the period of federal control, and the President took no steps to clarify his position on this issue. House Hearings, I, 7.

fact, with any form of centralized power remaining after the period of emergency—was intense. From every section of the country, there came denunciations of government ownership and opposition to any extension of federal control which involved the possibility of government ownership.⁹ By the time the House Committee on Interstate and Foreign Commerce began its hearings in the summer of 1919, the problem of disposing of the railroads had been practically resolved in favor of a return to private management. In opening the House Committee hearings, Chairman Esch remarked:¹⁰

Owing to the statement of the President in his message that he contemplated turning the roads back to private ownership and control at the end of the year, it would probably be doing a useless thing to give much consideration to an extension of five years of federal control, and in view of the widespread sentiment throughout the country against the Government ownership, I feel we ought not to spend very much time on that proposition.

At the very outset railroad consolidation became a major issue in the hearings. Secretary McAdoo, first witness before the Senate Committee on Interstate Commerce, listed 17 "reforms" accomplished as a result of federal operation of the roads as a single system, reforms which he thought ought to be continued whatever disposition of the railroads Congress chose to make.¹¹ Mr. McAdoo's list mentioned the following accomplishments:

1. The permit system, which enabled traffic to be controlled at its source.
2. Heavy loading of cars.
3. Pooling of repair shops.
4. Elimination of circuitous routes.

⁹ See Eliot Jones, *Principles of Railway Transportation*, Macmillan, New York, 1913, pp. 482-483.

¹⁰ House Hearings, I, 5-6.

¹¹ Senate Hearings, pp. 15-16.

5. Unification of terminals.
6. The " sailing-day " plan which avoided congestion in port area.
7. Consolidation of ticket offices.
8. Universal mileage tickets.
9. Standarization of equipment.
10. Uniform freight classification.
11. Maintenance of common time tables between important points.
12. Fixing of high demurrage rates and uniform demurrage rates.
13. Through waybilling of freight from point of origin to point of destination.
14. Elimination of rebilling by connecting or intermediate routes.
15. Elimination of mileage or per diem rentals of freight and passenger cars.
16. Simplification of the apportionment of interline passenger revenues.
17. Utilization of water routes for the relief of crowded rail lines.

The Secretary did not believe that these measures could be successfully continued unless there was either a reduction in the number of private railroad companies or consolidation into a single federal system.

One difficulty encountered in regulating a large number of diversified carriers received prominent mention by Secretary McAdoo, namely, the inequality in earnings of roads of different sizes and strength under the same level of rates. Mr. McAdoo pointed out that a schedule of rates which afforded a satisfactory return to some carriers would leave others bankrupt, and if the rates were raised to provide a margin of profit for the less prosperous, the stronger roads would reap excessive profits. He did not think any solution to the railroad problem was possible so long as this disparity of earnings continued to exist because this would always " cause question as to the propriety of any scale of rates." ¹²

¹² Senate Hearings, p. 39.

Mr. Walker D. Hines, who was elevated to the Office of Director General on January 11, 1919, appeared before the Senate Committee to lend his support to Secretary McAdoo's position. He agreed that no plan for the railroads could succeed which did not attempt to cope with diversified railroad management and the existence side by side of strong and weak roads. Nor did he believe that private operation of the railroads could succeed without effective federal action to restore operation to a profitable basis.

Senator Underwood. If the main question is finance, and the stability of operation rests on that problem, the real question involved is that each individual unit, whether we keep them as they are, or divide them into regional systems, should have an opportunity to earn enough return to take care of its betterments and extensions and to pay a reasonable rate on the capital used, is it not?

Director General Hines. Yes, Senator; and that is a thing that is absolutely impossible with all these different companies in their different conditions. It will not work in practice.¹³

Mr. Hines favored the use of compulsion to bring about consolidation of the railroads into fewer systems, because he did not believe that strong roads would willingly assume the burden of the weak.

Testifying for the Interstate Commerce Commission, Mr. Edgar E. Clark read into the record the Commission's annual report to Congress for 1918, including the proposal for "merger within proper limits of the carriers' lines in such part and to such extent as may be necessary in the general public interest."¹⁴ It was not the intention of the Commission, as Mr. Clark expressed it, to eliminate all competition by mergers; rather, competition in service ought to be preserved among a limited number of large systems. Referring to Secretary McAdoo's reforms, Commissioner Clark argued that these could

¹³ *Ibid.*, pp. 933-934.

¹⁴ See footnote 5 above.

be put into effect under a system of private control, with adequate supervisory powers delegated to the Commission, and urged that the railroads be granted relief from all state anti-trust laws and constitutional restrictions, as well as from federal legislation preventing consolidation.¹⁵ The Commissioner confirmed Senator Cummins' view that roads operating under a given level of rates had created one of the most difficult problems of regulation in pre-war years.

Senator Cummins. Now, the only way in which that element in the former problem can be removed is by absorption, is it not?—the combination of the railroads of the country?

Commissioner Clark. That would greatly simplify it because then they could utilize the most economical lines, and still they would get the earnings of both.¹⁶

However, the Commissioner disagreed with Senator Cummins that strong roads would not take over weak lines voluntarily. In his opinion, no compulsory means of effecting combinations should be adopted, because the government could not legally compel persons to sell their holdings to others on terms unacceptable to them, unless the government first exercised the power of eminent domain and then sold the condemned roads to private interests.¹⁷

The railway executives presented to Congress a 20-point program,¹⁸ which urged the creation of a Department of Transportation, headed by a Cabinet secretary, with power, among other things, over railroad consolidation, and recommended that the Interstate Commerce Commission be relieved of its executive duties, acting only as a quasi-judicial body to pass upon the reasonableness of rates and related questions. The executives favored the modification of existing laws to authorize

15 Senate Hearings, pp. 242-243.

16 Senate Hearings, p. 381.

17 House Hearings, pp. 57-58.

18 Senate Hearings, pp. 307-312.

consolidation and pooling on a voluntary basis, subject to the approval of the Secretary of Transportation.

Great concern was expressed by the railway executives over the deficits incurred in the course of federal operation, largely as a result of higher labor and materials costs. Mr. Alfred P. Thom, General Counsel of the Association of Railway Executives, offered figures to show that before federal control the rail operating ratio had been 76, but that under government management this ratio had risen to 95. If the railroads were returned to private operation, he thought it imperative that the government act "to restore the proper relationship between the earnings and the expenses of these roads," and ventured the opinion that a 25-percent increase in rates would accomplish the purpose.¹⁹ President Howard Elliott of the Northern Pacific also estimated that a 25-percent rate increase would be required to place the railroads on a sound financial footing.²⁰ Mr. T. Dewitt Cuyler, Chairman of the Association of Railway Executives and a Pennsylvania director, put the rule of rate-making desired by the executives in these words: "The rates," he asserted, "as a basic proposition of law, must at all time be sufficient to provide for meeting the wage scale, the cost of operation, and a return upon the investment."²¹

But the prospect of higher rates only increased the concern of the legislators to find a solution for the strong-weak road problem. Chairman Smith of the Senate Committee on Interstate Commerce stated the problem like this:²²

We have that before us now; that certain roads are receiving beyond what might be termed a reasonable compensation as compared with other roads, and when we investigate we find they are carrying more tonnage, and, consequently, getting a larger dividend on the capital invested than the other roads;

19 Senate Hearings, pp. 481-496; House Hearings, p. 1274.

20 Senate Hearings, p. 1258.

21 *Ibid.*, p. 325.

22 Senate Hearings, p. 322.

but the shipping public feels that, as they are earning this seemingly excessive amount, the rate should be lowered; and if you do lower it, you kill off the other road that, for one reason or another, has not been carrying so large a volume of traffic; and yet the people living contiguous to the road that is not successful seem to be entitled to the same rate as the people contiguous to the successful road, because the shippers have to meet in a common competitive market in the sale of their goods.

Mr. Cuyler, however, was not anxious to equalize returns among carriers and considered it "a misfortune of the other road, if it is not competently managed so as to attract the traffic."²³ Mr. Thom agreed with Mr. Cuyler that a strong and efficiently managed road should be rewarded by a higher return, but admitted that it might be desirable to eliminate some of the inequality among carriers. He thought much could be accomplished along this line by permitting consolidation. Later on, before the House Committee on Interstate and Foreign Commerce, he put his ideas into more concrete form:²⁴

Now, suppose that you can bring it about by a system that you create, that these roads which need support will be incorporated on proper terms with systems of roads, on a plan scientifically thought out and adopted, and that those systems after you have created them are comparatively equal in their needs and comparatively equal in their earning capacity, you will have gone far toward the solution of the question of the weak road.

Mr. Thom suggested that the nation's railroads be consolidated into from 20 to 35 systems, according to a plan adopted by a transportation board,²⁵ with the principal roads of the country

²³ *Ibid.*, pp. 321-323.

²⁴ House Hearings, p. 1247.

²⁵ Mr. Thom testified before the House Committee that the executives had abandoned the proposal for a transportation board with cabinet representation, since it was not indispensable to the carrying out of their program. House Hearings, p. 125-28.

maintained as separate competing organizations. President Elliott of the Northern Pacific recommended the formation of large railway systems competing in service and regulated as to rates. Such an arrangement would, in his opinion—

develop a greater spirit of effort on the part of officers and employees than if all competition were eliminated, and this spirit means much for the future development of the railroads and great satisfaction to the public.²⁶

All the railway executives who testified at the hearings favored a permissive system of consolidation as opposed to the use of compulsion.²⁷

The short lines supported consolidation at the hearings, though the bulk of their testimony was taken up with arguments for higher rates and special consideration. It was pointed out that federal control had worked a special hardship upon short lines and that energetic measures were required to save a substantial number of these lesser carriers.²⁸ Mr. Ben B. Cain, General Counsel for the American Short Line Association, presented a program for a more equitable division of through rates, a redistribution of traffic to feed the short lines, equalization of earnings among systems and consolidation of strong and weak lines.²⁹ In general the short lines agreed with the railway executives that the central problem was rates and stabilization of credit. A witness for the Short Line Association testified:³⁰

We feel that whenever the trunk line is obliged to permit the short line to live, not from trunk line earnings, but from the

²⁶ Senate Hearings, p. 1255.

²⁷ Mr. Thom alone approved the use of coercive measures to achieve consolidation, and recommended this step only if satisfactory progress were not made on a voluntary basis after a trial period of from five to seven years. House Hearings, pp. 1248-1249.

²⁸ Testimony of B. M. Robinson, President of the American Short Line Association, House Hearings, p. 1857.

²⁹ *Ibid.*, p. 1898.

³⁰ *Ibid.*, p. 1914.

rates paid by the people on the commodities as a whole, we feel that just the moment that the branch line is stabilized that the trunk lines will be ready to consolidate and take it over.

Investors in railway securities, while interested chiefly in certainty of returns, thought consolidation should be encouraged in order to assist the weaker roads. Mr. S. Davies Warfield, President of the National Association of Owners of Railroad Securities,³¹ presented to Congress a plan which aroused widespread interest because of its attempt to equalize earnings of rail systems. The Warfield Plan was based upon two principles: first, confiscation of railroad earnings over 6 percent on property investment, the money to be used to aid needy roads and railway labor; and, second, consolidation of weak and strong railroads.³² Mr. Warfield thought consolidation should be voluntary, subject to review by the Interstate Commerce Commission and undertaken only after careful consideration of all interests involved, including those of investors.³³ Mr. Nathan Amster, representing the Investors Protective Association and the Citizens' National Railroad League, advocated consolidation of all rail companies into one system, on the grounds that such a result would be simpler and more easily accomplished than the formation of a number of systems.³⁴ The Railway Investors' League favored consolidation as a solution of the strong and weak road problem, but thought compulsion was essential to the carrying out of the program.³⁵

Shippers, on the other hand, appeared lukewarm to consolidation and stressed the importance of maintaining competition between rail systems. The National Industrial Traffic League

31 Mr. Warfield was also President of the Continental Trust Company of Baltimore, Maryland, and Chairman of the Board of Directors of the Seaboard Air Line. Senate Hearings, p. 790.

32 *Ibid.*, p. 792.

33 House Hearings, p. 1663.

34 Senate Hearings, p. 1177.

35 House Hearings, p. 446.

supported "merger of railroads within reasonable limitations, and when approved by the Commission as in the public interest,"³⁶ and several smaller groups of shippers thought consolidation desirable if it did not result in a transportation monopoly.³⁷ But other organizations of traffic men denounced any effort to eliminate railroad competition. A representation of the American National Live Stock Association and the National Live Stock Shippers' League told the Congressmen:³⁸

If you get under the hide in this propaganda about wasteful competition, you will find the bankers controlling the roads started it and it was taken up by a lot of officials and others who commend themselves to the public by pouring forth as their very own, these words of wisdom about wasteful competition being eliminated, etc., and prove their sagacity by referring to what some great economist among captains of industry has said. So it is with editors.

It is simply a new tack to get rid of the antitrust laws, that the same people have been endeavoring to do in various ways for years.

Mr. Clifford Thorne, speaking for a number of grain, live stock and oil producers' organizations, agreed that caution should be exercised in removing competition between railroads; if consolidation were allowed at all, it should be gradual and permissive.³⁹ Appearing in behalf of the Southern Traffic League, Mr. William Wimbish argued that strong lines would lose their vitality when transfused with the "anaemic blood" of weak lines and supported his statements with illustrations of mergers in southern traffic territory.⁴⁰ A similar stand was taken by the

³⁶ Senate Hearings, pp. 1186-1187.

³⁷ Testimony of Southwestern Industrial Traffic League, Texas Industrial Traffic League and Texas Association of Commerce, Senate Hearings, p. 692.

³⁸ Senate Hearings, p. 1299.

³⁹ House Hearings, p. 2755.

⁴⁰ *Ibid.*, pp. 470-471.

Freight Payers' League of the United States.⁴¹ However, several large commercial and industrial associations expressed themselves in favor of a system of voluntary consolidation, including the National Association of Manufacturers⁴² and the United States Chamber of Commerce.⁴³

Representatives of the National Transportation Conference, which had been attended by delegates from nearly every organization with an interest in transportation, urged consolidation into 20 or 30 systems in order to equalize returns of strong and weak roads. Mr. Harry Wheeler, Vice President of the Union Trust Company and Chairman of the Conference, suggested that each of the country's principal traffic districts be supplied by more than one system in the consolidation plan and recommended that, if insufficient progress along the lines mapped out had been made after a trial period of five years or so, Congress take steps to make the program compulsory.⁴⁴ Another Conference spokesman, Professor Emory R. Johnson of the University of Pennsylvania, contended that consolidation into large systems would improve the efficiency of the American railway net. This did not imply the abandonment of competition, only—

it is no longer to be a struggle of weak roads to maintain themselves alongside their strong and jealous neighbors; it is to become the service rivalry of a limited number of vigorous systems of approximately equal strength.⁴⁵

Although labor subscribed to several section of the Conference report, its chief commitment throughout the hearings was to the Plumb Plan of government ownership. This did not, however, mean opposition to consolidation. As a matter of fact,

⁴¹ *Ibid.*, p. 2366.

⁴² House Hearings, p. 516.

⁴³ *Ibid.*, pp. 1102-1103.

⁴⁴ *Ibid.*, p. 187.

⁴⁵ House Hearings, p. 287.

Mr. Glenn Plumb, who presented his plan in behalf of the American Federation of Labor and the Railway Brotherhoods, urged its adoption as a means of conserving to the public the benefits of unified operation which had been enumerated by government spokesmen.⁴⁶ And Mr. A. B. Garretson, supporting the Plumb Plan for the Railway Brotherhoods, thought railway consolidation a logical and inevitable development, the final step being the union of all roads under one control—that of government.⁴⁷

The attitude of one other group represented at the hearings is worth examining. The National Association of Railway and Utilities Commissioners favored the merger of the carriers' lines and facilities to such extent as the public interest required, provided competition in service was retained between systems, but urged that the Interstate Commerce Commission be authorized to pass upon all combinations of roads with ample provision for State authorities to present their reasons for or against consolidation.⁴⁸

THE CONSOLIDATION PROVISIONS OF THE ACT

As a result of the Senate hearings, a bill⁴⁹ was introduced into the Senate on September 2, 1919, by a sub-committee of the Committee on Interstate Commerce, headed by Senator Cummins. This measure, known as the Cummins Bill, differed in many important respects from the Esch Bill, which developed out of the House hearings and reached the floor of the lower chamber on November 10, 1919. With regard to consolidation, the Senate bill provided for the grouping of the carriers into from 20 to 35 systems, under a plan to be drawn up by a Transportation Board and approved by the Commission, each system to be incorporated under federal law. The program was

⁴⁶ Senate Hearings, p. 999.

⁴⁷ *Ibid.*, p. 1080.

⁴⁸ Senate Hearings, p. 754.

⁴⁹ S. 3288 (66th Cong., 1st Sess.).

to be made compulsory unless it had been pushed to completion within seven years by voluntary action. The Esch Bill, on the other hand, sanctioned permissive consolidation without benefit of a plan: by its terms two or more railroads could unite their properties whenever such a unification, in the opinion of the Interstate Commerce Commission, would achieve better rail service or promote the public interest.

Senator Cummins' bill did not come up for consideration in the Senate until December 2, 1919, after the House had already passed the Esch Bill. To speed action on the legislation, the Senate passed the enabling clause of the House bill, substituting the measures of the Cummins Bill for the remainder of the bill, and both Houses of Congress appointed conference committees to iron out differences. The settlement in most cases favored the House bill: the proposed Transportation Board was dropped, as well as all provisions looking toward compulsory consolidation. The declaration of policy favoring consolidation into a limited number of systems was, however, retained together with the requirement that the Interstate Commerce Commission prepare a comprehensive plan of consolidation. On February 18, 1920, ten days before the President had indicated he intended to return the roads to private management, the conference committee produced a bill which was rushed through the House on February 21, and passed the Senate two days later. On February 28, President Wilson signed the Esch-Cummins Bill, better known as the Transportation Act of 1920.⁵⁰

The consolidation provisions of the Act appeared under Title IV as amendments to the Interstate Commerce Act.⁵¹ Section 5, paragraph (4), of this title directed the Commission as soon as practicable to "prepare and adopt a plan for the consolidation of the railway properties of the continental United States into a limited number of systems." In mapping out the rail systems, the Commission was required to take into account

⁵⁰ *United States Statutes at Large*, XLI, 478-486.

⁵¹ *United States Statutes at Large*, XLI, 481-482.

three factors: (1) Preservation of competition as fully as possible; (2) Maintenance of existing routes and channels of trade wherever practicable; (3) Arrangement of the carriers so that, wherever possible, the systems formed could earn substantially the same rate of return under a uniform system of rates.

Section 5, paragraph (5), of the Act established the procedure by which the Commission was to formulate its comprehensive plan of consolidation. After a tentative plan had been adopted by the Commission, notice was to be given of public hearings, following which the Commission was to adopt and publish a complete plan. However, at any time thereafter, the Commission was authorized, upon its own motion or upon application, to modify the complete plan in any way which it thought would promote the public interest. Paragraph (6) of Section 5 permitted the carriers to consolidate their properties voluntarily, provided the new arrangement harmonized with the complete plan and met with Commission approval, and provided also that the capitalization of the new corporation did not exceed the value of the constituent properties as determined by the Commission. The final paragraph of Section 5 relieved the carriers from the operation of the antitrust laws and from the effect of any other federal or state prohibitions standing in the way of consolidation.

It should be noted that Congress used "consolidation" in these paragraphs in a strict sense, that is, consolidation into one corporation for ownership, management and operation of previously separate properties. It is also significant that consolidation was intimately related to valuation and rate-making, which were covered in the Act in Sections 19a and 15a, respectively. Valuation was involved in two ways: first, the Commission had to complete its valuation of properties in order to create systems of approximately equal earning power upon the value of the properties, and, second, the Commission had to make sure that the total securities of the new consolidated company did not surpass the value of the combined properties, a provision de-

signed to avoid financial abuses which had previously accompanied consolidation. The rate-making formula of Section 15a required the Commission to establish such rates that carriers as a whole (or as a whole in each of such rate groups or territories as the Commission might designate) could earn a fair return upon the value of the property devoted to transportation.

The Transportation Act also provided for looser forms of railroad combination, such as leases and stock purchases, or any method of acquiring control "not involving the consolidation . . . into a single system for ownership and operation." Paragraph (2) of Section 5 authorized the Commission, upon application of one or more carriers to enter into one of these looser combinations, to approve the application if it were found to be in the public interest and to attach thereto such terms and conditions as it considered just and reasonable.

SUMMARY—THE INTENT OF CONGRESS WITH RESPECT TO CONSOLIDATION

The Transportation Act of 1920 concerned itself largely with financial problems. After it became apparent that an overwhelming sentiment existed for return of the roads to private management, Congress had to find ways and means of removing financial losses incurred under federal control and of assuring the profitable and efficient operation of the railroads by their private owners in post-war years. Representatives of the carriers and of railway investors offered testimony showing that railroad credit could be restored only if the Government assumed the deficit arising from federal operation of the roads and adopted a rate-making policy which would cover costs of operation and afford an adequate return on investment. Acceptance of such a policy, the executives agreed, would require an immediate increase in rates of about 25 percent to meet swollen costs of labor and materials.

Congress reacted to these demands with considerable liberality. Section 209 extended the standard return to the owners of rail properties, based upon the average of three relatively pros-

perous years ending June 30, 1917, for six months after March 1, 1920.⁵² The government assumed the deficits of the carriers incurred under federal control, even those of lines released from federal operation before July 1, 1918, and created a fund of \$300,000,000 from which loans could be made to the roads at reasonable rates. In addition, Congress enacted into law the rate-making formula proposed by the executives by directing the Commission, in Section 15a of the Act, to prescribe rates which would yield the carriers a fair return upon the value of their properties used for transportation purposes.

The benefits of Section 15a were almost immediately realized by the carriers. In May 1920, the railroads applied for permission to increase their freight charges in amounts alleged to be necessary to produce net revenues yielding an annual return of 6 percent upon the cost of their properties as shown upon their books. After several weeks of hearings, but prior to a determination of the case, the United States Railroad Labor Board authorized increases in the wages of many classes of railway employees, estimated to amount to approximately \$618,000,000 per annum. Following this award, amended proposals were submitted by the carriers covering, in addition to freight, all other classes of traffic. On July 29, 1920, the Commission granted rate increases amounting to 20 percent upon all passenger traffic, a surcharge upon passengers using Pullman accommodations equal to one half of the total charge for these accommodations, and the following freight rate increases: Eastern carriers, 40 percent; southern carriers, 25 percent; western carriers (east of Rockies), 35 percent; mountain-Pacific carriers, 25 percent; interregional traffic, 33 $\frac{1}{3}$ percent.⁵³

Members of Congress conceded the need for an advance in rates to provide a return on investment, but were deeply con-

⁵² The standard return of a carrier was its average annual net operating income for the three years ended June 30, 1917. This return, certified to the Director General of Railroads by the Commission, determined the compensation to be paid the carrier by the government during the period of federal control.

⁵³ *Increased Rates, 1920 Ex Parte 74*, 58 I. C. C. 220 (1920).

cerned with the disparity in earnings of individual roads operating under a common level of rates. Time and again it was pointed out that rates which would provide reasonable returns for strong systems would not permit weak lines to survive, and if rates were raised to take care of the weak roads, the more prosperous roads would enjoy excessive returns. The railroad executives had no recommendations on the problem of strong and weak roads, in fact asserted that a superior road was entitled to receive higher earnings,⁵⁴ but this did not satisfy Congress. The lawmakers were inclined to favor, instead, a plan advanced by Mr. S. Davies Warfield, President of the National Association of Owners of Railway Securities, which called for consolidation of the weak with the prosperous roads and, pending the completion of consolidation,⁵⁵ for recapture of excess earnings of wealthy carriers and their redistribution, through loans to the weak roads.

There is abundant evidence to indicate that the chief concern of the legislators throughout the discussion of consolidation before the Senate and House Committees was the fate of the weak roads. Many of these roads had been cast adrift during

⁵⁴ The railroad executives, with the exception of President Willard of the Baltimore & Ohio and Mr. Thom, their General Counsel, opposed the Warfield Plan for recapture of excess earnings. President Cuyler of the Association of Railway Executives was especially critical of equalizing returns between strong and weak roads (House Hearings, p. 1158):

"Mr. Sanders of Indiana: In the consideration of the plan for rate making one of the difficulties that we encounter is the question of the weak and strong roads. Will you kindly indicate how, in your opinion, this plan takes care of that problem?"

"Mr. Cuyler. It does not take care of it; we leave it as it was in the past. We believe that it is contrary to American enterprise and also contrary to our Constitution, that a weak road should be supported by a strong road."

⁵⁵ Senator Cummins said this of recapture:

"The recapture clause, so called, was put into the Transportation Act as a make-shift—as a stop-gap. It was put in because it seemed to be necessary to do it pending the consolidation, which I have always hoped would be brought about and which, once effected, would make unnecessary entirely the so-called recapture clause." Hearings on S. 2224 before the Senate Committee on Interstate Commerce (68th Cong., 2d Sess.), 1925, p. 73.

the period of federal control, and those which had been taken over by the government had been placed under the management of officers of large carriers who were indifferent to their welfare. These short and weak lines, which Senator Cummins declared represented a third of the total mileage of the country and which were indispensable to the existence of thousands of mines, mills, factories and farming areas, were emerging from their wartime status, after two years of neglect, on the verge of physical and financial ruin.⁵⁶ Members of the Senate and House Committees, many of whom, like Senator Cummins, came from western and midwestern states vitally dependent upon the continued operation of these roads, were unwilling to adopt any program which took care of the large and powerful railroad systems but did not make provision for the weak. Regarding these, Senator Cummins said, during Congressional debate on the bill: ⁵⁷

Mark you, I am speaking only of those roads which the good of the communities through which they run requires shall be sustained, and there are 75,000 miles, possibly 100,000 miles, of main-track railroad in the United States that can not be maintained upon the rates which will maintain the more than 160,000 miles which remain.

Public opinion would not stand for the abandonment of these weak roads. How, then, could the problem of maintaining this mileage, and yet at the same time establishing equitable rates for all carriers, strong and weak, be solved? Senator Cummins told his colleagues in the Senate:

⁵⁶ Striking illustrations of the plight of the weak lines were given to Congress by Senator Gay of Louisiana. *Congressional Record* (66th Cong., 1st Sess.), 1919, LIX, part 1, 906-908.

⁵⁷ *Congressional Record* (66th Cong., 1st Sess.), 1919, LIX, part 1, 131. At a later date Senator Cummins stated: "There was one great concern when we formulated the Transportation Act, to take care of the short lines and keep them running in the service of the people. That is the object of consolidation, and I think it is the one thing that will determine whether we are to have public or private ownership." Hearings on S. 2224 (68th Cong., 2d Sess.), 1925, p. 137.

You may inquire as you will, you may study it deeply as you may, but you will finally reach the conclusion that it can only be done through consolidation.

Later on, Senator Cummins again further described the purpose of the Transportation Act of 1920, prepared by himself, as being not so much to bring about savings in the cost of operation through consolidation, with regard to which there was considerable difference of opinion,⁵⁸ but was "to keep the railroads of the country running at the lowest practicable rates of transportation." He added:⁵⁹

I believe that if there be not a consolidation, there are just two alternatives—a large part of the mileage of the railways of the United States must be abandoned or the Government must take charge of the transportation system and operate it at the public cost.

Despite the efforts of Senator Cummins to secure the adoption of a mandatory program of consolidation, Congress failed to follow his recommendations on this matter because of the widespread objection to compulsion and because of certain practical difficulties. The railroad executives objected strenuously to compulsory consolidation,⁶⁰ and their advocacy of a permissive system was backed up by the short lines, the Interstate Commerce Commission, the National Association of Manufacturers, the United States Chamber of Commerce, the National Industrial Traffic League and other politically powerful organizations. Mr. Harry Wheeler, Chairman of the National Transportation Conference, and Mr. Alfred Thom, counsel for the railway executives, suggested that if insufficient progress were

⁵⁸ Senator Cummins stated that the economies brought about by consolidation were "a negligible factor" in his mind. As a matter of fact, there was very little discussion of economies at the hearings.

⁵⁹ Hearings on S. 2224 (68th Cong., 2d Sess.), 1925, p. 73.

⁶⁰ Senator Cummins reported to the Senate that the railway executives opposed the use of compulsion. *Congressional Record* (66th Cong., 1st Sess.), 1919, LIX, part 1, 226.

made in carrying out a permissive consolidation program during a trial period of perhaps five years, Congress might act to compel consolidation.⁶¹ But they argued that a voluntary system be tried first. Commissioner Clark expressed "that a great deal would be done voluntarily" if the carriers were allowed to combine, and saw no way in which a compulsory consolidation program could be carried out except by government condemnation, purchase and sale of railroad properties.⁶² Since valuation was intimately related to the plan to equalize returns among systems and to the requirement that the securities of a consolidation not exceed the value of the constituent properties, Senator Cummins realized that it would be impossible to force through a plan immediately. Addressing a meeting of the Academy of Political Science in December 1919, Senator Cummins stated: ⁶³

In my judgment, the only reason for postponing compulsory consolidation for a single moment . . . is that the work of the Interstate Commerce Commission in valuing the railroad properties may be completed. It is said that this work will have been finished in the course of two or three years.

Congress gave the Commission considerable latitude in the drawing up of the consolidation plan, but added the somewhat inconsistent requirements that competition be maintained as fully as possible and existing channels of trade preserved wherever practicable. These limitations ruled out any thoroughgoing reconstruction of the railroad network and to a considerable extent regional consolidation, since the maintenance of competition "as fully as possible" would require that each of the principal traffic districts of the country be supplied with more than one system. The most positive objective which the Commission

⁶¹ Testimony of Mr. Harry Wheeler, Chairman of the National Transportation Conference, House Hearings, p. 187; Mr. Alfred Thom, General Counsel of the Association of Railway Executives, pp. 1248-1249.

⁶² House Hearings, pp. 57-58.

⁶³ A. B. Cummins, "The Senate Committee Railroad Bill," *Proceedings of the Academy of Political Science* (1919), VIII, 525.

was to keep in mind in working out its consolidation plan was to create systems capable of earning substantially the same return under a uniform level of competitive rates. That Congress considered such a plan feasible is indicated in the remarks of Senator Cummins in a discussion of the Senate bill: ⁶⁴

The committee—and I speak more confidently of my own convictions—know that it is practicable to divide the railways of the United States into not less than 20 or more than 35 systems, so that tested by the business of the three years before the war . . . the net earnings of each system compared with the value of the properties rendering this service . . . will be so nearly equal that the difference will be negligible.

The significance of the consolidation provisions of the Transportation Act lay in the recognition by Congress and the general public that a policy of enforced competition among railroads benefited neither the industry nor the nation. Some of the lessons of previous decades of railroad history and of wartime operation of the roads as a single system had been learned. Competition was to continue, but it was no longer to be a ruthless struggle between strong and weak roads, which had so often destroyed the usefulness of short lines to small communities throughout the country, but rather, as Professor Johnson expressed it, "the service rivalry of a limited number of vigorous systems of approximately equal strength." ⁶⁵ Not only were the railroads relieved from the application of the antitrust laws if they combined under Section 5 of the Transportation Act, but they were encouraged to consolidate under a plan to be worked out by the Commission. The railroads thus became the first major industry in which large combinations were looked upon with public favor and in which a systematic integration of properties was promoted as part of national policy.

⁶⁴ *Ibid.*, p. 523.

⁶⁵ See footnote 45 above.

CHAPTER IV

THE TENTATIVE PLAN OF CONSOLIDATION

THE RIPLEY REPORT

THE first task of the Interstate Commerce Commission in carrying out the consolidation provisions of the Transportation Act was the formulation of a tentative plan. In order to obtain expert guidance for this important project, the Commission asked Professor William Z. Ripley of Harvard University to prepare a report on consolidation which might serve as the basis of the plan which the Commission was required to adopt. Professor Ripley, an eminent student of railway affairs and a director of the Rock Island Railroad,¹ began his work in the fall of 1920 and devoted nearly five months to research, conferences and writing, in connection with his assignment. During this period he engaged in extensive correspondence and held many interviews with railway executives, seeking advice and opinions on matters affecting the consolidation of their particular properties.² On January 31, 1921, Professor Ripley submitted his report to the Commission, and on August 3, 1921, after six months of study of the report and consultation with its author, the Commission issued its tentative plan of consolidation.³ The 196-page Ripley report was published along with, and in support of, the Commission's tentative plan.

1 Professor Ripley had worked with the United States Industrial Commission in 1900 and 1901 as a transportation specialist, and had prepared the special report on Trainmen's Schedules and Agreements for the United States Eight Hour Commission in 1917. He was, in addition, the author of several well-known books on railroads, including *Railway Problems* (1907), *Railroads—Rates and Regulation* (1912), and *Railroads—Finance and Organization* (1914).

2 Discussion of the correspondence and conferences with eastern railway executives may be found in *Railroad Combination in the Eastern Region*, Senate Document 1182 (76th Cong., 3d Sess.), 1940, Part 2, pp. 541-560.

3 *Consolidation of Railroads*, 63 I. C. C. 455 (1921).

After discussing the intent of Congress in regard to consolidation, particularly the rate-making objectives of the Act and the desire to deal with the strong-weak road problem, Professor Ripley decided that the best method of procedure in formulating a plan of consolidation was, first, to establish serviceable operating rail systems and, then, to apply the test as to equality of earning power. Ripley noted that the statute called for the maintenance of existing routes and channels of commerce, and concluded that unless the location of its railways conformed to the commercial requirements of the country, there could be no permanent prosperity for either.⁴ Accordingly, the report eschewed transcontinental systems and any configuration of railroads which did not fit into the nation's geographic and rate-making divisions, and sought to develop strong and well-balanced systems within each of the existing traffic territories.

Professor Ripley admitted that no sure method of distinguishing strong and weak roads existed, and acknowledged the desirability of waiting for a few years to ascertain earnings of individual carriers under the new level of rates and to obtain the results of the Commission's valuation of railroad properties. Unfortunately, he could not delay his report until these data became available, but had to rely on information ready at hand. Consequently, in order to relate the size and earning power of systems recommended by the report during a representative period of time, Ripley utilized statistics of mileage, volume of traffic, investment in road and equipment, and net operating income for the years immediately preceding federal operation of the railroads.⁵

The Ripley report divided the nation's railroads into six territorial groups: (1) Trunk line territory; (2) New England;

⁴ *Ibid.*, p. 477.

⁵ These statistics indicate investment in road and equipment, total and per mile of line; revenue ton-miles; revenue per ton-mile; railway operating revenue, total and per mile of line; miles operated; and percentage net operating income of total investment in road and equipment. See 63 I. C. C. 648-655.

(3) the Chesapeake Bay region; (4) the Southeast; (5) the Western transcontinental region; (6) the Southwestern-Gulf region. The consolidations proposed in the report will be discussed in that order.

TRUNK LINE TERRITORY

Professor Ripley found the mapping of a suitable plan of consolidation for this section of the country complicated by four chief factors: (1) the difference in size and strength of the many railroads in the East; (2) the series of loose links lying east and west of Buffalo, New York; (3) the monopoly of terminals and entrances into important centers held by the largest carriers; and (4) the small number of passes in the Allegheny Mountains suitable for east-west travel.

Ripley began with the principal trunk lines running between Chicago and the Atlantic Seaboard. Two of these, the Pennsylvania and the New York Central, were already so strong as to require no further additions and might even be pruned to the extent necessary to place them on a plane of competitive equality with other systems. The Baltimore & Ohio, after some strengthening at either end, could serve satisfactorily as a third system. That left the weak Erie as the only remaining trunk route, along with such roads east and west of Buffalo as the Nickel Plate, the Wabash, the Lehigh Valley and the Lackawanna. Ripley recognized the difficulty of constructing two strong systems, with adequate feeders, branch lines and terminals, from these lines. On the other hand, the inclusion of all these roads in a fourth system, as suggested in a plan published by a Boston banker, Mr. John E. Oldham,⁶ would result in con-

6 The Oldham Plan (*Nation's Business*, February 1920), contained 14 systems made up of the following principal carriers:

Eastern District

1. New York Central System—New York Central; Boston & Maine; Maine Central; Western Maryland.
2. Buffalo System—Erie; Wabash; Nickel Plate; Lackawanna; Lehigh Valley; Pere Marquette.
3. Pennsylvania System—Pennsylvania; New Haven.

siderable duplication of facilities, notably in the case of the Erie and Nickel Plate lines south of Lake Erie, and would place two strong competitors, the Lehigh Valley and the Lackawanna, under a common control. Ripley's views on a four-system plan were embodied in a letter to President Willard of the Baltimore & Ohio, dated January 3, 1921:⁷

The trunk-line problem narrows down to the question of constituting either one or two systems out of the lines which remain after the Pennsylvania, the New York Central, and Baltimore & Ohio are cared for. Oldham and others think we cannot make two sufficiently strong systems on the Erie and the Lackawanna-Nickel Plate stems, respectively. But if

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4. Baltimore-Reading System—Baltimore & Ohio; Philadelphia & Reading; Central of New Jersey; Chesapeake & Ohio; Norfolk & Western.

Southern District

5. Coast Line-Louisville & Nashville System—Atlantic Coast Line; Louisville & Nashville; Norfolk Southern.
6. Southern System—Southern; Chicago, Indianapolis & Louisville; Florida East Coast.
7. Illinois Central-Seaboard System—Illinois Central; Seaboard.

Western District

8. Great Northern-North Western System—Great Northern; Chicago & Northwestern; Chicago, St. Paul, Minneapolis & Omaha.
9. Milwaukee System—Milwaukee; Soo Lines; Duluth, Missabe & Northern; Duluth & Iron Range.
10. Northern Pacific-Burlington System—Northern Pacific; Burlington; Colorado & Southern; Ft. Worth & Denver City.
11. Union Pacific System—Union Pacific; part of the Central Pacific to form a through route to San Francisco; Chicago Great Western.
12. Rock Island-Missouri Pacific System—Rock Island; Missouri Pacific; Denver & Rio Grande Western; Western Pacific; Texas & Pacific; El Paso & Southwestern.
13. Santa Fe-Frisco System—Atchison, Topeka & Santa Fe; St. Louis & San Francisco; International-Great Northern; St. Louis Southwestern; Midland Valley.
14. Southern Pacific System—Southern Pacific; Central Pacific (except lines allotted to the Union Pacific); Missouri-Kansas-Texas; Chicago & Alton; Kansas City Southern.

⁷ *Railroad Combination in the Eastern Region*, p. 553.

you put them together, they parallel too closely everywhere. I stand for two systems for that reason.

The Ripley report offered another argument against the four system plan, namely, that throwing the Erie, Nickel Plate, Wabash, Lehigh Valley and Lackawanna together into one system would produce "a heterogeneous aggregation altogether surpassing the possibility of efficient management."⁸

The report proposed, therefore, the creation of five systems in trunk line territory, the Pennsylvania, the New York Central, the Baltimore & Ohio, an Erie-Wabash combination, and a system composed of the Nickel Plate and the Lackawanna. No addition was made to the New York Central or Pennsylvania systems, except the Rutland, which went to the New York Central. Instead, Professor Ripley recommended withdrawing the Kanawha & Michigan and parts of the Toledo & Ohio Central from the New York Central and assigning them to the Nickel Plate-Lackawanna system. The report also severed the Norfolk & Western from the Pennsylvania, since its inclusion would have magnified the Pennsylvania's already predominant position, and made the Norfolk & Western the basis of a separate Pocahontas system. The Baltimore & Ohio, which in 1917 had one-half the mileage and one-third the revenues of the Pennsylvania, was fortified at its eastern end by allotment of the Reading and the Jersey Central and at its western extremities by addition of the Cincinnati, Indianapolis & Western and the Chicago, Indianapolis & Louisville (Monon).

In the case of the Erie two fundamental weaknesses had to be overcome before this road could offer substantial competition to the first three systems created. The first of these, an overcapitalized financial structure, Ripley did not propose to deal with. The second weakness, inadequate access to lake ports and to eastern coal fields, Ripley sought to correct by joining the Wabash lines east of the Mississippi to the Erie, thus affording the latter a new route to Chicago north of Lake Erie

and a St. Louis entrance. Several strong coal roads were placed in the Erie's system, including the Lehigh Valley, the Delaware & Hudson, the Pittsburgh, Shawmut & Northern and the Pittsburgh & Shawmut, and additional strength was provided by inclusion of the Bessemer & Lake Erie, a prosperous ore carrier owned by the United States Steel Corporation.

Ripley based the fifth system west of Buffalo upon the Nickel Plate, whose 500 miles of line had formerly been at the mercy of the Lake Shore but which showed signs of reviving under the management of the Van Sweringens,⁹ and east of Buffalo upon the sturdy Lackwanna. It was admitted that considerable expense would be required to bring the Nickel Plate up to Lackwanna standards, but Ripley argued in support of the combination that the availability of another direct and low-grade route to Chicago would assist the development of the area south of the Lakes. The system was furnished a line to St. Louis and additional lake outlets by assignment of the Lake Erie & Western, the Toledo, St. Louis & Western, the Toledo & Ohio Central and the Buffalo, Rochester & Pittsburgh, and was planted firmly in eastern coal fields by means of the Wheeling & Lake Erie, the Pittsburgh & West Virginia and the Western Maryland. The last-named road also furnished an entrance to Baltimore. Professor Ripley pointed out that some new construction in the Pittsburgh area would provide the system with a through route from the Lakes to tidewater. He noted in passing that this assemblage of lines, though no more than 5,000 miles in length, had a relatively high gross revenue per mile of line as compared with the other eastern systems.

Ripley next attacked the problem of distributing roads in areas adjacent to trunk line territory among the five systems created, and turned his attention first to carriers in the lower Michigan peninsula. But here he found there were simply not enough roads to satisfy the requirements of all five trunk lines. The New York Central and the Pennsylvania were already well taken care of by subsidiaries operating in the region, and the

⁹ See Chapter VI.

Baltimore & Ohio could be merged with the Pere Marquette, but this left next to nothing for the Erie-Wabash and Nickel Plate-Lackawanna systems. The only other possibility was to consolidate all roads in the area into a single system. This was the recommendation of the Ripley report, which argued in support of a regional plan that it would avoid dismemberment of peninsular roads and permit Michigan industrialists to route their products over the trunk lines or via Gulf and South Atlantic ports. The need of this regional system for a soft-coal line of its own was supplied by the addition of the Detroit, Toledo & Ironton.

NEW ENGLAND

The treatment of New England in the Ripley report resembled that of Michigan. As a matter of fact, the report drew a striking parallel between the two areas: both were described as possessing extensive water frontages and rich industrial districts in the south, and in each the number of localities and rail lines fell off to the north. Neither region contained an adequate coal supply. Moreover, the existence of the Lake ferries at the northwest corner of the Michigan region invited comparison with the rail lines projected across New England from Canada.

According to Ripley, New England's transportation problem hinged upon its need to import raw materials and foodstuffs at low cost and to ship its manufactured goods cheaply to outside competitive markets. Since tonnage received generally exceeded tonnage delivered by New England carriers, the trading power of New England depended upon its ability to market high-grade and specialized products to advantage, and the distribution by its railroads of these products "in such a manner as to assure both preferred service and a fair proportion of the through rate."¹⁰ In order to accomplish these objectives, Professor Ripley favored a regional system, independent of the trunk lines.

10 63 I. C. C. 512.

The only other possibility was, of course, to parcel out the New England carriers among the trunk lines, a course of action supported by many persons, including John Oldham. The distribution plan most commonly urged would have left the Boston & Albany with the New York Central, attached the New Haven to the Pennsylvania, Baltimore & Ohio or the Lackawanna-Nickel Plate combination, and allocated the Boston & Maine to the New York Central or the Erie. Advocates of this plan offered four principal arguments: (1) New England roads would have the credit of strong systems behind them; (2) more efficient operation could be secured as a result of union with the trunk lines; (3) equipment shortages of New England carriers could be remedied by use of surplus equipment of the trunk lines; (4) coal could be brought into New England at a relatively low cost.

Ripley contended that no practicable scheme of trunk line affiliation could be devised since any possible arrangement would necessarily establish arbitrary connections and exclude one or more of the trunk lines. Merging the Pennsylvania with the New Haven would materially add to the former's already prominent position without effecting substantial improvement in the latter's overcapitalized financial structure, and would tend to throw more traffic through the congested New York area. The Nickel Plate-Lackawanna system could scarcely afford to assume the obligations of the New Haven, and pairing the latter with the Baltimore & Ohio would favor ports south of Boston already served by that trunk line. To add the Boston & Maine to the New York Central would exaggerate the Central's power and eliminate competition between the Boston & Maine and the Boston & Albany. No plan of combining New England roads with trunk lines could possibly give equal competitive strength to the trunk lines.

Ripley offered instead a regional plan which would have united all New England roads in a single system. Although it might be objected that this plan eliminated competition *inside* New England, it had the effect of increasing competition *out-*

side the region, competition, that is, of the trunk lines for New England traffic, and thus strengthening the bargaining position of New England's industrialists and carriers. The most serious objection to the regional plan was admittedly the low earning power of New England roads. Their average rate of return on invested capital ¹¹ had amounted to only 5.33 percent in 1917 and had undoubtedly fallen during the war; on the other hand, earnings might be increased as a result of economies of operation as a single system. Finally, Ripley proposed a coal route for the region by appending the Lehigh & New England.

THE CHESAPEAKE REGION

Separate consideration was also given to the roads in the Chesapeake Bay area between the Pocahontas coal fields and tidewater, namely, the Chesapeake & Ohio, the Norfolk & Western and the Virginian. Although the Virginian lacked the size of its two competitors, and the Chesapeake & Ohio was actually a trunk line to Chicago, Ripley pointed out that the three systems had one common denominator—coal—which constituted nearly 70 percent of all their freight. Because of wide fluctuations in the volume of westbound coal as compared with that carried to tidewater, Ripley thought a flexible system should be established so that surpluses of coal might move readily in either direction. This could be accomplished by giving each system an outlet east and west.

There was, of course, no need to alter the Chesapeake & Ohio, which already fulfilled all the requirements, but the Virginian and the Norfolk & Western still lacked lines running to the Great Lakes. In the Virginian's case the deficiency was supplied by adding the Kanawha & Michigan and the eastern branch of the Toledo & Ohio Central, roads which had been severed from the New York Central's system. If the Commission proved willing to cut the Norfolk & Western loose from

¹¹ Ripley computed a carrier's return on invested capital by dividing its net railway operating income by its investment in road and equipment as reported to the Interstate Commerce Commission.

the Pennsylvania,¹² Ripley suggested that the Pocahontas carrier might be brought to the Lakes over the Sandusky line of the Pennsylvania or over the western division of the Toledo & Ohio Central. But the most satisfactory solution was, in his opinion, combination of the Norfolk & Western with the Virginian, with joint use of the Kanawha & Michigan and the Toledo & Ohio Central lines, thus creating a system with approximately the same earning power as the Chesapeake & Ohio. Consequently, the Ripley report recommended two systems in the Chesapeake region, the Chesapeake & Ohio and a Norfolk & Western-Virginian combination.

THE SOUTHEAST

Several distinguishing characteristics of the Southeast were pointed out in the Ripley report, the most significant being its relatively sparse population, light and highly seasonal rail traffic, the pronounced scarcity of local industry and prevalence of the long haul in transportation. Because of the dependence of the South upon northern industry and foodstuffs, and because of the growing movements from Gulf ports to South America, the question immediately arose: Should the southeastern systems be extended to Chicago?¹³ Ripley decided in the negative, largely because agreements between southern roads and trunk lines concluded in the fall of 1920 had done much to equalize rates for products moving either south or east from midwestern centers.

No change was contemplated in the case of the Southern Railway, although Ripley discussed the advisability of withdrawing the Mobile & Ohio from the system. The Mobile & Ohio was not an essential part of the Southern and had never earned

¹² Professor Ripley noted the long duration of the Pennsylvania's control of the Norfolk & Western, and doubted "whether the statute respecting consolidation contemplates the severance of these stock relationships which have subsisted for years." However, he left the decision with the Commission. 63 I. C. C. 533.

¹³ The Illinois Central, of course, already reached Chicago; but this point was minimized in the Ripley report.

a return upon investment; but in the absence of any better disposition for the road, ownership by the Southern was continued. Ripley rejected a proposal to transfer the St. Louis-Louisville division of the Southern to the Chesapeake & Ohio in order to afford the latter a through route to St. Louis, basing his stand on three grounds: (1) This line assisted in relieving congestion around St. Louis; (2) St. Louis shippers desired additional connections with the Southeast; (3) the line could not handle the heavy traffic originating on the Chesapeake & Ohio. The report dealt several small roads to the Southern, chiefly because there was no other place for them to go: these included the Cincinnati, New Orleans, and Texas & Pacific, the Georgia Southern & Florida, and the New Orleans-Great Northern.

Like the Southern Railway, the Louisville & Nashville-Atlantic Coast Line system was considered well-balanced and in need of little retouching. The Ripley report did attempt to bridge one gap—between the western and southeastern extremities of the system, through the heart of Georgia—by assignment of the Atlanta, Birmingham & Atlantic and the Georgia & Florida. To round out the system and also to dispose of several small properties in the area, the Norfolk Southern and the Winston-Salem branch of the Norfolk & Western were placed in the Atlantic Coast Line-Louisville & Nashville combination.

The Seaboard was admittedly the weak sister of the Southeast. Should it be merged with the Illinois Central as suggested in numerous consolidation plans? Arguments for so doing were conceded to be strong, the principal one being that such a merger would create an attractive route between the Midwest and Florida. Ripley, however, decided against this proposition for three reasons: (1) Competition between the Seaboard and the Central of Georgia, property of the Illinois Central, would be destroyed; (2) existing routes of commerce would not be maintained, since the Atlantic Coast Line would be deprived of present connections with the Seaboard; (3) neither system had its own coal supply. Consequently, the recommendations for

the Seaboard were quite conservative: It was allotted a single road, the Georgia & Florida, and traffic rights over the Atlanta, Birmingham & Atlantic. Permitting the Seaboard to participate in the affairs of the Clinchfield gave the system a suitable coal supply.

The Ripley report made very little change in the Illinois Central. This system was permitted to retain the Central of Georgia and the Yazoo & Mississippi Valley, and Ripley dismissed the idea of fitting the Chicago-Omaha line of the Illinois Central into the Union Pacific because this move would injure the Illinois Central without contributing substantially to the transcontinental road. He preferred to take care of the Union Pacific's need for a Chicago entrance by utilizing the Chicago & North Western for the purpose. Only one addition to the Illinois Central was suggested, namely, that the Memphis-Birmingham division of the Frisco be used to supplement the Central's southeastern lines.

There remained three southeastern roads whose disposition raised serious problems for the consolidator, the Richmond-Washington Company (Richmond, Fredericksburg & Potomac), the Clinchfield and the Florida East Coast. In the first two cases joint control was recommended, the Richmond-Washington Company to continue under the common ownership of the Southern, Seaboard, Atlantic Coast Line, Pennsylvania, Baltimore & Ohio and Chesapeake & Ohio, and the Clinchfield to go to the Southern, with traffic rights accorded the Seaboard and the Atlantic Coast Line-Louisville & Nashville coalition. The Florida East Coast, left as an orphan after the foregoing allocation, was not included in any large system in the Ripley report; because of its unique position it could not equitably be given to any single carrier and was merely made a fifth system in the southwest.

THE WESTERN TRANSCONTINENTAL REGION

The Ripley report included in this part of its discussion all roads west of the Mississippi River, with the exception of those

carriers whose service was confined largely to the Southwest. It was pointed out that topography exercised tremendous influence upon the number and location of lines in the West. For instance, the number of through routes to the West Coast was limited to seven by the Rocky Mountain barrier, the seven gateways through this barrier being held by the Great Northern, the Northern Pacific and the Milwaukee in the north; the Union Pacific and the Denver & Rio Grande in central western territory; and the Santa Fe and Southern Pacific farther down the Divide. The major problems of mapping suitable combinations, as Ripley saw them, were, first, to maintain a wholesome degree of competition among these three groups of systems and, second, to associate the Granger roads lying east of the Rockies with the transmountain stems on a sound and equitable basis.

For Ripley, the key to the western railroad situation was held by the oldest and most direct transcontinental—the Union Pacific-Central Pacific route. The immediate task was to provide a worthy competitor for this route based upon the Denver & Rio Grande and the Western Pacific. Since both of these roads lacked financial strength, it was necessary to find a powerful and well-balanced system to carry them, requirements which could be met only by the Burlington and the Santa Fe. The first of these, although the foremost road in Granger Territory, could not by itself carry the load and needed additional reinforcement, which might be supplied by the Northern Pacific. The Santa Fe possessed the strength required to carry the Denver & Rio Grande and the Western Pacific and could find advantageous uses for this northern route through the mountains. But the latter solution was not itself without drawbacks, particularly in view of the unsettled status of the Central Pacific.¹⁴ Ripley saw the problem in the following light: ¹⁵

15 63 I. C. C. 566.

(1) If the Central Pacific remains a part of the Southern Pacific system, and the Santa Fe and the Denver & Rio Grande

¹⁴ A suit had been begun under the Sherman Act to separate the Central Pacific from the Southern Pacific. See Chapters II and VI.

(Western Pacific) are combined, the Union Pacific is not only completely eliminated from San Francisco, but is also threatened both at Los Angeles and Seattle. . . .

(2) If the Central Pacific be transferred from the Southern to the Union Pacific, this alternative jeopardizes the Southern Pacific everywhere in California by withdrawing its Central Pacific Ogden link, while coincidentally adding a new Ogden link to its deadly rival, the Santa Fe, creating thereby a new direct through line.

Confronted with this dilemma, Ripley concluded that the Burlington, rather than the Santa Fe, should be selected "as the David to meet the Goliath of the Union Pacific on its own ground."

Turning now to the Northwest, Ripley had to decide whether there ought to be two or three systems in this region. The answer depended, first, on the number of useful connections between Chicago and the Twin Cities, since the Great Northern and the Northern Pacific ought to be brought into Chicago and, secondly, on the balance of power between opposing systems. On the first account, Ripley observed that the absence of satisfactory connections east of St. Paul argued strongly for merger of two of the northwest systems. This meant that either the Great Northern or the Northern Pacific should be allied with the necessitous Milwaukee,¹⁶ and considerations of strength made Ripley incline towards the Great Northern, which enjoyed the higher rate of return. Although this proposed partnership of the Milwaukee and Great Northern would undoubtedly be attacked on the grounds that it tended to eliminate competition in the Northwest, the Ripley report argued in defense that important economies could be realized as a result of joint operation of the two roads through Montana, Idaho and Washington. The point which, in Ripley's mind, clinched the case for pairing the Great

¹⁶ The Chicago, Milwaukee & St. Paul Railway Company, which Ripley referred to as the "St. Paul," became the Chicago, Milwaukee, St. Paul & Pacific Railway Company following bankruptcy in 1925, and is generally known as "The Milwaukee Road."

Northern and the Milwaukee was the need for offsetting the formidable combinations proposed elsewhere in the report, one consisting of the Burlington, Northern Pacific, Western Pacific and Denver & Rio Grande and the other formed by the Union Pacific, Central Pacific and Chicago & North Western.

Selection of the North Western as the Granger connection of the Union Pacific conformed to established traffic relations and to the principle of combining weak and strong roads. The Ripley plan also called for the extension of the system to St. Louis over the western branch of the Wabash. At the other end of the system, however, the disputed status of the Central Pacific presented a serious problem, since this strategic carrier was indispensable both to the Union Pacific and to the Southern Pacific. Ripley admitted that loss of the Central Pacific would weaken the Southern Pacific and impair the latter's monopoly of California traffic. Still he favored combination of the Central Pacific with the Union Pacific so as to preserve the single route contemplated by Congress in the original grant. Should this policy be followed, the Southern Pacific and Central Pacific would still coordinate their use of San Francisco terminals, and the resultant increase in competition in the central California area would likely prove beneficial to shippers in that locale.

The Ripley report made a number of interesting suggestions regarding carriers in the Northwest and Central West. One of these recommended the construction of a road tunneling through the Rockies due west of Denver and tying into the Western Pacific on the other side of the Divide. In 1922 the Denver & Salt Lake Railroad began construction of the Moffat Tunnel and its line across the Rockies was subsequently connected to the main line of the Denver & Rio Grande Western.¹⁷ Other recommendations contained in the report included: (1) Construction by the Union Pacific of an interior route through central Oregon to Portland; (2) Closing of the gap in the Burlington-Northern Pacific system between Twin Cities and

¹⁷ *Denver & Salt Lake Ry. Co. Control*, 70 I. C. C. 4. See Chapter VII.

the Missouri River by inclusion of the Chicago Great Western and the Minneapolis & St. Louis; (3) Strengthening of the Great Northern-Milwaukee system by adding the Soo lines and several prosperous Minnesota iron ore roads.

Ripley had no hesitation in recommending the merger of the Southern Pacific and Rock Island. Such an arrangement would bring the Southern Pacific into Chicago and form a well-balanced system more capable of competing with the Santa Fe. To improve connections between the Southern Pacific and Rock Island, the El Paso & Southwestern was allocated to the system, along with several small properties in Arizona, New Mexico and Texas.

The Ripley report termed the Santa Fe "one of the most compact, complete and financially well-balanced railroads in the United States"¹⁸ and left it practically untouched. The only changes proposed for the Santa Fe system were its extension to St. Louis, preferably by new construction since no first class route was available for the purpose, and a New Orleans entrance, which could be secured by incorporation of the Gulf Coast Lines.

But what of the Colorado & Southern and the Ft. Worth & Denver City? These roads, both owned by the Burlington, traversed a territory nearly devoid of competitors and ran at right angles to the transcontinentals. Geographically, Ripley considered them outside the orbit of the Burlington-Great Northern system. Practically, it would be unwise to combine them with the Santa Fe, since this move would eliminate all competition in the areas of eastern Colorado and West Texas. At the same time, combination with the Southern Pacific-Rock Island system might compel the Santa Fe to build a parallel line in order to hold its competitive position in the region. Faced with these undesirable alternatives, Ripley decided to place the Colorado & Southern and the Ft. Worth & Denver City in neutral hands—to be exact, with a southwestern carrier, the Missouri Pacific.

THE SOUTHWEST

Although Ripley did not fashion an elaborate case for separate consideration of roads in the Southwest as he had done, for instance, in the case of southeastern carriers, he did present the difficulties of obtaining a satisfactory solution of the railroad problems of this region through combination. To tack the southwestern roads on to the transcontinentals, Ripley thought, would eliminate competition in the Gulf area; and, as a matter of fact, most of these roads were of little use to the transcontinentals. To place all the southwest carriers in a single system would create excessive duplication of lines and facilities and altogether submerge competition. On the other hand, the general weakness of roads in the region prohibited the formation of numerous systems. As a result, Ripley fell back upon a plan of two southwestern combinations, built upon what he called "the two great southwest systems," the Missouri Pacific and the Frisco.¹⁹

The question immediately arose: Should the southwest roads be brought into Chicago? It will be recalled that this question had been answered for the southeastern roads in the negative. But Ripley found special circumstances which, in his opinion, called for an affirmative answer: (1) the southwestern lines competed with the transcontinentals to the west and with the Illinois Central to the east; (2) the southwestern roads lacked long-haul traffic; (3) connections with Chicago were available; (4) continuation of the southwest lines to Chicago would promote competition between that center and St. Louis. Hence, the report urged that both the Frisco and the Missouri Pacific extend to Chicago, the first over the lines of the Chicago & Alton, and the second over the Chicago & Eastern Illinois.

Substantial additions were made to the systems of both southwest carriers. Besides the Alton, the Frisco was allotted the Cotton Belt, the Louisiana Railway & Navigation Company, most of the Missouri-Kansas-Texas (Katy) and the

Trinity & Brazos Valley. The Missouri Pacific was permitted to retain control of the Texas & Pacific and the International-Great Northern, and was further supplied with the Kansas City Southern, the Kansas, Oklahoma & Gulf, the Louisiana & Arkansas, and parts of the Katy and Mobile & Ohio, thus creating a direct route from Kansas City to the Gulf. Ripley suggested that two off-shoots of the Missouri Pacific, one from Kansas City to Omaha and the other reaching through northern Kansas, be transferred to one of the transcontinentals. As previously indicated, the Colorado & Southern and the Ft. Worth & Denver City were given for safekeeping to the Missouri Pacific.

RECAPITULATION

The Ripley report ended with a brief review of the consolidations which had been proposed for the various regions of the country. All told, 21 systems had been created, 5 trunk lines, 5 western combinations, 4 southeastern systems, 2 lake-to-tide soft-coal systems in the Chesapeake Bay area, 2 southwest combinations, and 3 regional systems located in New England, the southern Michigan peninsula and along the east coast of Florida. The nation's leading seaports—New York, New Orleans, Galveston, San Francisco and Seattle—had, in Ripley's opinion, been provided with adequate rail service, while in the interior special care had been taken to make Chicago and St. Louis pivotal centers for consolidation. Ripley justified his plan with the assertion that each important city in the country had been given at least two competing railroads, with the exception, of course, of the regional monopolies. A more zealous scheme of consolidation would have materially reduced competition and would have placed small communities at the mercy of large railroad centers.

Statistics indicated considerable divergence in size and traffic among the 21 systems proposed in the report.²⁰ For example,

²⁰ 63 I. C. C. 648-655.

the Chesapeake & Ohio had a length of only 2,761 miles, while four western systems each operated more than 20,000 miles of line. In the matter of revenue ton-miles of freight carried, and in net ton-miles per mile of line, equally wide differences were apparent. But Ripley insisted that the supreme test was equality of earning power, and in this respect the plan achieved greater success. The rate of earnings was computed by Ripley on the basis of net operating income for 1917, divided by the average investment in road and equipment for the years 1912 and 1913. The 14 systems lying east of the Mississippi River were reasonably close to an average rate of return on invested capital of 5 percent, with only the Seaboard and the Michigan system below the 4-percent mark. Comparison of the rates of earnings of the transcontinentals showed remarkably little variance: all fell in a range of 4.69 and 5.64 percent on invested capital. Taking all 21 systems into consideration, the lowest earning power was indicated by the Michigan roads—3.23 percent—while the Norfolk & Western-Virginian system enjoyed a return of 6.18 percent. Ripley admitted that the Southwest systems were weak—rate of return of the Missouri Pacific was 3.75 percent and of the Frisco, 3.80 percent—but he thought it probable that the capital accounts of the roads had been overstated. In any event, the report observed, valuation would have to be completed before genuine uniformity in earning power among the various systems could be assured.

In conclusion, the contribution of consolidation to efficient railway operation was mentioned, including such features as solid train movements from point of origin to destination, the elimination of duplicate lines and equipment, and the establishment of uniform standards of roadbed and rolling stock. It was conceded, however, that any consolidation program was the product of many compromises and the reconciliation of many special interests affected by such a program. But, maintained Ripley, the larger view should prevail. A national pro-

gram of consolidation was too important to be impeded by narrow and partisan interests.

THE TENTATIVE PLAN

The Commission's tentative plan of consolidation²¹ which preceded the Ripley report called for consolidation of the nation's railways into 19 systems, as compared with the 21 systems proposed by Ripley, with the inclusion in larger systems of several smaller lines which Ripley had left independent. However, in nearly every important aspect the tentative plan followed Ripley's suggestions. The Commission published the Ripley report in full, prefacing it with only a few pages of explanation as to its genesis and the Commission's own understanding of the assignment. Differences between the Commission's plan and the Ripley report were made explicit at the end of each proposed grouping. In both cases terminal properties and short roads were omitted. The specific listing of railroads included in the several systems by the Commission may be found in the Appendix.

At the outset the Commission took pains to stress the "tentative" nature of the plan and indicated an open-minded attitude by providing for alternative groupings in the case of many disputed properties and by declaring that additional suggestions and counter-proposals would be welcomed. On several important points, the tentative plan departed from the recommendations of the Ripley report. These points will be discussed for each of the principal regions covered in the consolidation plan.

In trunk line territory, the Commission accepted a plan for five systems and based the first four of these upon the New York Central, the Pennsylvania, the Baltimore & Ohio, and the Erie. However, the fifth system combined the Nickel Plate with the Lehigh Valley instead of with the Lackawanna as Ripley had suggested. The Lackawanna itself was to be included either in the Erie System, or in System No. 7a, an

²¹ *Consolidation of Railroads*, 63 I. C. C. 455 (1921).

aggregation of New England and Great Lakes carriers. The question of the roads owned jointly by the New York Central and the Pennsylvania was left open (no particular recommendation regarding these lines had been made by Ripley), but the Western Maryland was grouped with the New York Central instead of in the Nickel Plate system as proposed by the Ripley report.

The Commission entertained an open mind in regard to the New England railways. While sufficiently attracted by Ripley's reasoning to provide for the formation of a single New England system, the Commission also attempted to allocate the New England properties among the trunk lines, and as a third plan originated the idea of a New England-Great Lakes system. Under the suggested allocation of New England lines, the New York Central was given the Boston & Maine, the Maine Central and the Bangor & Aroostook; the Baltimore & Ohio was awarded the New Haven, and none of the other trunk lines received any New England properties. The third proposed New England grouping—System 7a—added to the New England regional consolidation the Delaware & Hudson, the Lackawanna, the Buffalo, Rochester & Pittsburgh, and several other small lines. The Commission properly noted that the addition of these lines had not been recommended by Professor Ripley.

No change in Ripley's proposals for the Michigan peninsula was made by the Commission: all roads in that region were combined into one system, and the Detroit, Toledo & Ironton added as a coal supply.

In the Chesapeake Bay region the Commission accepted the formula of two systems for Pocahontas carriers, but combined the Virginian with the Chesapeake & Ohio instead of with the Norfolk & Western as Ripley had done. The basis of this decision, stated in a footnote, was that consolidation of the Virginian with the Norfolk & Western would involve eastbound haul of westbound coal on the Virginian to the vicinity of Roanoke, unless there was new construction near Gauley

Bridge, West Virginia. Combination with the Chesapeake & Ohio seemed preferable because it would permit coal originating on the Virginian to move west through the existing transfer point at Deepwater, West Virginia. As recommended by Ripley, the Norfolk & Western was detached from the Pennsylvania and brought to the Lakes over the lines of the Toledo & Ohio Central.

Several important changes were made in the case of roads operating in the Southeast. The Commission adopted the plans for a Southern system and an Atlantic Coast Line-Louisville & Nashville combination, but decided to consolidate the Illinois Central and the Seaboard, Ripley's arguments to the contrary notwithstanding. The Florida East Coast and the Richmond, Fredericksburg & Potomac, neither of which had been included in a system in the Ripley report, were both placed by the tentative plan in System No. 11, Atlantic Coast Line-Louisville & Nashville. The Commission proposed that the Clinchfield be incorporated either in System No. 11 or in the Illinois Central-Seaboard combination. Ripley, it will be remembered, had given the Clinchfield to the Southern, permitting the Seaboard and the Atlantic Coast Line-Louisville & Nashville systems to retain trackage rights over the line.

In the West, however, the tentative plan deviated considerably from the lines laid down in the Ripley report. The Commission provided for merger of the Union Pacific with the North Western, but declined to bring the system into San Francisco over the lines of the Central Pacific as suggested by Ripley. Instead, the Central Pacific was left with the Southern Pacific. Of special significance was the Commission's allocation of the Western Pacific-Denver & Rio Grande to the Santa Fe. The Ripley report had included this route in the Northern Pacific-Burlington combination. Peculiarly, the Colorado & Southern and the Ft. Worth & Denver City, both of which had been attached to an outside system, the Missouri Pacific, in the report, were also accorded to the Santa Fe. The Commission

agreed to the proposed combination of the Milwaukee and Great Northern and the merger of the Southern Pacific and Rock Island, but failed to follow Ripley in several minor matters involving redistribution of portions of the Minneapolis & St. Louis, the Chicago Great Western, and the Chicago & Eastern Illinois.

In the Southwest the tentative plan adopted Ripley's idea of grouping all roads in the area into two systems and the proposal to extend these systems to Chicago. The tentative plan listed a Frisco-Katy-Cotton Belt system carried to Chicago over the lines of the Chicago & Alton, and a Missouri Pacific system entering Chicago by means of the Chicago & Eastern Illinois.

No effort was made by the Commission to indicate the earning power of the various systems proposed, but it is unlikely that the range of rates of return on invested capital differed measurably from that in the Ripley report. In general, the Commission felt that its plan conformed to the requirements laid down in the Transportation Act and that, while tentative, the plan afforded a substantial basis for consolidating the railroads into a limited number of systems.

CHAPTER V

HEARINGS ON THE TENTATIVE PLAN

THE SCOPE OF THE HEARINGS

THE Tentative Plan described in Chapter IV was adopted by the Interstate Commerce Commission August 31, 1921, and shortly afterwards served on the carriers and other interested parties. Not until March 21, 1922, however, was notification given by the Commission of hearings, the first of which were scheduled to be held on April 24 on railroad properties in the Southeast. In the formal notification the Commission emphasized the point that the tentative plan had been advanced to elicit a full hearing and that it could be modified in the light of evidence and counterproposals which might be offered at the hearings.¹

On April 24, 1922, hearings were opened in Washington with Commissioner Henry C. Hall presiding and Mr. Thomas P. Healy acting as trial examiner. It soon became apparent, however, that the carriers had no idea of the kind of evidence desired by the Commission. In order to clarify the situation, Commissioner Hall declared that the Commission was trying to carry out the mandate of Congress in determining along what lines consolidation could be achieved within the terms of the Transportation Act and that the Commission wished to have a full record upon which to base its decisions. Information was desired on the contribution of each carrier to the transportation work of the country,

the different physical characteristics or other characteristics that they have that are pertinent to the question of whether

¹ In the notification of hearings the Commission stated: "The tentative plan was put forward to elicit a full hearing. . . . It is understood of course that alternative or modified plans may be submitted in lieu of any system proposed in the tentative plan." Record In the matter of Consolidation of the Railroads into a Limited Number of Systems, Docket 12964, Vol. I.

it can best render service by uniting its efforts more particularly with one than another carrier, in one system rather than another.

The statute is there for you just as much as it is for us. It affords just as much light to you as it does to us. It is a matter of interpretation and in this proceeding the Commission looks to the carriers of the country, who, if anything is to be done under this statute, will have to do it—as they come together voluntarily—looks to the carriers of this country to help us build a record upon which we can all depend as representing fact and not fiction and not surmise.²

However, after some further discussion, it became clear that many of the carriers were not prepared to offer testimony of the type desired. Feeling that very little progress was being made, Commissioner Hall suggested that the railroads appoint a committee to confer with Examiner Healy, Professor Ripley and himself, to formulate an outline of material desired for the record. To this the carriers readily assented. After a preliminary conference, the carriers reported that they had not had sufficient opportunity to talk things out among themselves, but that they felt such conferences were of value and should be arranged also for the eastern and western railroads.

One other development at this first hearing deserves mention. That is the statement on consolidation submitted by the National Association of Owners of Railway Securities; as the result of a study made of its Board of Economics and Engineering, the Association concluded that:

It is not now practicable for the Commission to adopt a definitive plan for consolidation . . . no definitive plan could be adopted without impairing the objective of the Transportation Act, except (2) after mobilization of data not now available to the Commission, (b) after further development of the joint

² Record In the matter of Consolidation of the Railroads into a Limited Number of Systems, Docket 12964, Vol. I, pp. 30-31.

use of terminals at important and controlling terminals, and if possible (c) after the lapse of additional time within which natural alliances might be expected to be proposed to and considered by the Commission under Section 5 (2) of the Interstate Commerce Act.³

The Association stressed the point "that the consolidations proposed must be so logical and so sound in their physical aspects as to commend themselves to the owners or so palpably in the public interest as to assure acquiescence by their owners."⁴ In the meantime, permissive consolidations as contemplated in Section 5 (2) of the Act should not be discouraged by the Commission.

Brief studies of the New England and Michigan roads, accompanied by exhibits, were submitted to show how competition in those areas might be maintained by admission of the trunk lines. Although no definite conclusions were reached in the Association's report, it was declared that these studies indicated "the great divergence of views that may quite readily be entertained in respect to compliance with the broad principles of the Transportation Act" and that this evidence had been presented "merely for the sake of illustrating the necessity for flexibility."⁵

This statement seems to have set the tone of the meetings and the spirit in which much of the evidence was presented at the hearings. That is to say, many of the parties offering testimony appeared to be interested not so much in assisting the Commission in arriving at a decision as in proving that it was impossible to arrive at any decision at all.

3 Record In the matter of Consolidation of the Railroads into a Limited Number of Systems, Docket 12964, I, 106. Mr. S. Davies Warfield, who testified for the National Association of Owners of Railway Securities, was the author of the Warfield Plan of consolidation and recapture which had been incorporated in substance in the Transportation Act.

4 *Ibid.*, p. 107.

5 Record In the matter of Consolidation of the Railroads into a Limited Number of Systems, Docket 12964, I, 107.

Hearings were held intermittently from May 1922 to January 1924, first in Washington, and then in various key centers of the country. After southeastern carriers had testified, hearings were held on consolidation in the western and eastern regions in that order; final hearings on all systems were conducted in Washington from November 16 to November 26, 1923, and oral arguments were presented January 7 to January 12, 1924—making in all 89 days spent in hearing evidence and oral argument. At hearings, ordinarily only one commissioner and one or two trial examiners were in attendance, though the entire Commission sat to hear oral argument in Washington. In addition, Professor Ripley attended most of the Washington and regional hearings and frequently engaged in the examination of witnesses.

The material compiled in connection with these hearings on the Tentative Plan—I.C.C. Docket No. 12964—consists of 56 volumes of evidence, 4 volumes of briefs, and 21 volumes of supplementary material. Besides the briefs, the Record includes some 12,690 pages of testimony and more than 700 exhibits.⁶ There is contained in the Docket much basic data on railroad equipment, operating conditions, interchange and financial statistics. However, the Commission's eagerness to build up a record led it to admit much opinionated and unsubstantiated material. Little effort was made to appraise the accuracy of basic data or to weigh the economies that might result from consolidation along certain lines, and although the subject was frequently mentioned, no real analysis of the relation of valuation to consolidation.

⁶ The full docket—No. 12964—contains not only the record of the hearings, i. e., the testimony, exhibits and briefs, but also correspondence in connection with the hearings. While scattered portions of the testimony (purchased from the official reporter) are available at the Railway Business Association Library in Washington and at several other libraries in the country, Docket 12964 in its entirety may be found only in the Docket Room of the Interstate Commerce Commission in Washington, D. C.

THE RECORD

TRUNK LINE TERRITORY

As Professor Ripley had pointed out, the major problem in the East was to construct systems capable of competing successfully with the two dominant roads, the New York Central and the Pennsylvania. The Ripley report and the tentative plan proposed to accomplish this by setting up five systems, including, besides the Pennsylvania and New York Central, a strengthened Baltimore & Ohio, an Erie-Wabash group and a fifth system based on the Nickel Plate and Lehigh Valley.

The two major roads, however, objected strenuously to losing parts of their systems considered essential to the upbuilding of rivals. President A. H. Smith of the New York Central declared that assignment of the Ohio Central lines to the Norfolk & Western would violate the requirement to maintain existing routes and channels of commerce.⁷ The Pennsylvania's president, Mr. Samuel Rea, could not agree to the severance of the Norfolk & Western to form a separate Chesapeake Bay system, observing that Ripley himself had pointed out that the Pennsylvania and the Norfolk & Western were supplementary rather than competing roads and that separation would injure both systems.⁸ The New York Central also opposed the assignment of the Buffalo, Rochester & Pittsburgh, with which it had a considerable exchange, to another system.⁹ Neither the New York Central nor the Pennsylvania wished to change the status of roads jointly owned by them, such as the Monongahela, the Pittsburgh, Chartiers & Youghiogheny, the Lake Erie & Pittsburgh and the Central Indiana.¹⁰

Going even further, both of the two major trunk lines asked for additional roads. President Rea of the Pennsylvania sug-

⁷ Record, pp. 7158-7161.

⁸ *Ibid.*, pp. 7285-7288.

⁹ Record, p. 7155.

¹⁰ Brief for the New York Central Railroad, p. 65.

gested that either the Chicago & Alton or the Chicago & Eastern Illinois would round out his system in the West by furnishing a Chicago-St. Louis route. Mr. Rea was cool, however, to the idea of taking over the New Haven at any time in the near future but thought that valuation and reorganization would make the New Haven's properties more attractive.¹¹ President Smith of the New York Central not only indicated his willingness to accept the Rutland and the Western Maryland, which had been assigned to his road in the tentative plan, but thought that the Central of New Jersey and parts of the Reading should also be added. The obvious purpose was to increase the New York Central's already considerable grip on the terminals of New York, and to keep the two terminal roads out of the hands of a competitor. President Smith argued that he was concerned with the handling of the growing metropolitan business and that possession of the terminals would assist the New York Central in relieving congestion in the port area. He cited the advantages of an interior route between Chicago and New York formed by the main lines of the Jersey Central and trackage over the northern line of the Reading, connecting with the New York Central's line at Williamsport, Pennsylvania. This route, he argued, could be most helpful in relieving congestion on the main line of the New York Central through Albany.¹² As for the New England lines, President Smith preferred to let people in that region work things out in their own way; if the choice were made to consolidate the Maine lines with the New York Central, he would offer no resistance.¹³

Chief support for the Commission's trunk line arrangements came from the Baltimore & Ohio, which had been rather well treated in the tentative plan. President Willard indicated his road's need of the Central of New Jersey and the Reading to gain better entrance into the New York port district and bit-

¹¹ Record, pp. 7290, 7290.

¹² Record, pp. 7185-7187.

¹³ *Ibid.*, pp. 7358-7382.

terly attacked the New York Central's bid for the terminal properties.¹⁴ He contended that the benefits of the interior route proposed by the Central would be negligible, since the Central would continue to favor its low-grade route through Albany. In President Willard's opinion, it was the Jersey Central's excellent and spacious terminal facilities on the west side of New York Harbor which made that road attractive to the New York Central. He stated his willingness to give trackage rights over the terminal properties to the New York Central, but did not think such rights would be satisfactory if granted to the Baltimore & Ohio by the Central.¹⁵ At one point, President Willard stated that the Baltimore & Ohio might have to leave the port of New York if the Jersey Central terminals went to the New York Central.¹⁶

No serious objections to System No. 4 were offered by the Erie, although President Underwood suggested that other lines besides the Delaware & Hudson, the Lackawanna and the Wabash should be added. He suggested the inclusion of the Lehigh & Hudson, the Western Maryland, the Wheeling & Lake Erie and the Ohio Central lines, all of which had been allotted to other systems in the tentative plan.¹⁷ Chairman W. H. Williams of the Wabash criticized the splitting of his road at the Mississippi River by the Commission as disruptive of existing routes and channels of commerce. He did not believe that System No. 4 as proposed could stand up against the major trunk lines. In a lengthy statement he attacked the Transportation Act, the Ripley report, the tentative plan and consolidation

¹⁴ See Willard's testimony on this point, Record, pp. 10914-10936. Smith's testimony may be found on pp. 11088-11092.

¹⁵ Willard's testimony on trackage rights is significant: "As a physical matter, however, it is recognized, I think, by most operating men that too much trackage over too long a period too long a distance or with too many companies having trackage, makes confusion in the operation of trains." Record, p. 10963.

¹⁶ Record, p. 10919.

¹⁷ *Ibid.*, pp. 7746-7747.

generally. The following results might be expected from consolidation, declared Mr. Williams:

1. Better opportunity for Governmental and political exploitation of the railroads.
2. Net loss to security holders of railroads.
3. Deterioration in service.¹⁸

Instead of the dismemberment of the Wabash, he thought it ought to be included in a system comprising also the Lackawanna, the Wheeling & Lake Erie, the Buffalo, Rochester & Pittsburgh, the Pittsburgh & Lake Erie, the Western Maryland and possibly the Boston & Maine.¹⁹

The Nickel Plate interposed no fundamental objection to System No. 5, except to point out in the testimony of its General Manager, Mr. W. A. Colston, the relative weakness of Systems 4 and 5 as compared with Systems 1, 2 and 3. It might prove more advisable, he suggested, to combine Systems 4 and 5 and to add either the Chesapeake & Ohio or the New England roads. A foothold on the Michigan peninsula was also held to be desirable, although Mr. Colston readily admitted the difficulty of disposing equitably of the Michigan properties and of establishing proper trunk line alliances.²⁰

Mr. W. S. Jenney, General Counsel for the Lackawanna, also adopted an attitude on the whole favorable to the Commission proposals. The Lackawanna, it will be recalled, was grouped by Professor Ripley with the Nickel Plate and by the Commission with the Erie or in System 7a—New England-Great Lakes. Mr. Jenney expressed concern that the surpluses of his road would be drained to build the Nickel Plate up to Lackawanna standards. System 7a he considered impracticable, pointing out that for 1921 the roads in this proposed combination showed a net loss of \$20,000,000.²¹ Still he did not pro-

¹⁸ Record, p. 7780.

¹⁹ *Ibid.*, p. 7817.

²⁰ Record, pp. 7920-7922.

²¹ *Ibid.*, p. 7845.

pose to add to the excessive strength of the New York Central or the Pennsylvania by distributing the parts of System No. 7a among these two roads. In his opinion, the Jersey terminal roads should not be allocated to any trunk line, but should be left free to negotiate with all lines entering the New York port area. Mr. Jenney's testimony thoroughly substantiated Ripley's contention that the major problem in trunk line territory was to find systems capable of competing with the major roads:

It would seem clear that unless the New York Central and the Pennsylvania were dismembered no competing systems in Official Classification Territory could be constructed which could earn approximately the same rate of return on the value of their properties. On the other hand, to dismember such systems would offend the provisions of the statute requiring the Commission to preserve existing routes and channels of trade. This entire question is of such magnitude and depends to so great extent upon future financial results of the operations of these properties that it would seem the Commission should at least withhold final action upon this matter until it had completed the physical valuation of these properties.²²

The problem of grouping roads in trunk line territory was further complicated by the unwillingness of the smaller roads, particularly those earning respectable rates of return, to be combined in larger systems. Frequently, too, the smaller companies advocated the creation of separate systems in which they might play the leading role. President M. C. Byers of the Western Maryland—a road which the Commission proposed to include in either System No. 1 or No. 5—preferred the strength of the New York Central to the weakness of the Nickel Plate, but for the most part depicted the beauties of a system reaching from Great Lakes to tidewater, composed of the Wheeling & Lake Erie, the Buffalo, Rochester & Pittsburgh and the Western Maryland.²³ The Reading expressed opposition to being placed

²² Record, pp. 7757-7758.

²³ *Ibid.*, pp. 7264-7270.

in either the Baltimore & Ohio or the New York Central system and did not wish to lose its intimate relations with the Central of New Jersey. A. T. Dice, the Reading's president, thought it a better idea to combine his road with the Central of New Jersey, the Lehigh & Hudson and the Lehigh & New England, thus forming an independent system, which would have the advantage of facilitating coal movement to New England and ensuring free entry for all trunk lines into the New York area. The fact that this combination earned 6.67 percent on its invested capital in 1921 was no deterrent to Mr. Dice.²⁴

The Central of New Jersey did not share all the affection felt for it by the Reading. Its president, W. G. Besler, considered the Reading a competitor, although more complementary to the Central of New Jersey than other roads. He thought the Baltimore & Ohio could get along with only trackage rights over his road, and preferred to leave the Jersey Central independent and accessible to all the important trunk lines.²⁵

President L. F. Loree of the Delaware & Hudson was especially antagonistic to the Commission's proposals. He indulged in a lengthy condemnation of government interference in business and declared that the tentative plan "did not contain, by the most remote implication, the primary essential of a plan of consolidation, namely an indication of the terms on which unions proposed could be accomplished."²⁶ The directors of the Delaware & Hudson, he stated, "look with apprehension upon consolidation academically achieved and arbitrarily imposed. . . and anticipated no gain to themselves or to the public."²⁷ Particularly he disliked the New England regional plan: (1) it omitted certain roads such as the Boston & Albany and the Central Vermont; (2) it created too powerful a combina-

²⁴ Record, p. 7345. This return was the ratio of the combination's aggregate net railway operating income to its total investment in road and equipment as reported to the Interstate Commerce Commission.

²⁵ *Ibid.*, pp. 7571-7619.

²⁶ Record, p. 7646.

²⁷ *Ibid.*, p. 747.

tion. It would be better, he suggested, to combine the northern New England roads with the Delaware & Hudson, and add practically every road in Systems 4 and 5 to round out the system. Under no conditions, however, should the Boston & Maine be merged with the New York Central.²⁸

The Lehigh Valley took much the same position as the Lackawanna in regard to the sufficiency of Systems 4 and 5,²⁹ but the Buffalo, Rochester & Pittsburgh objected to inclusion in System No. 5, Nickel Plate, offering evidence to show that its principal business was with the New York Central.³⁰ Both the Lehigh & New England and the Lehigh & Hudson wished to be kept as independent bridge lines to New England, though the former was not averse to consolidation of the two bridge lines.³¹ The United States Steel Corporation urged that its plant facility, the Bessemer & Lake Erie, be retained in its present status, stating that the Company was prepared to spend some \$5,000,000 in enlarging the dock facilities at Lake Erie.³²

Most of the small roads in the area made no appearance to approve or contest their treatment in the tentative plan, but the few that did offer testimony generally preferred to be left to decide their own fate; that is, to make the most advantageous merger possible. The position of such roads as the Pittsburgh & Shawmut, the Pittsburgh, Shawmut & Northern and the Buffalo & Susquehanna, was summed up by the president of the latter as follows:

Consideration of the welfare of this property, of its patrons and of the desirability of certain alliances seems to have been submerged in the opinion that certain projected systems were big enough without this road. . . . This railroad is not needed to round out any system or to complete any scheme of group-

28 Brief for the Delaware & Hudson, pp. 3-33.

29 Record, p. 7899.

30 Record, p. 7961.

31 *Ibid.*, pp. 8619-8625.

32 *Ibid.*, pp. 7675-7677, 7721.

ing. To arbitrarily assign it to any group would subject it to disadvantage without benefiting anybody; and it should be left at liberty to make an alliance with members of such one of the four groups as may be found to be best.³³

Less opposition was encountered from roads in the Michigan area. President F. H. Alfred of the Pere Marquette agreed to the single Michigan system proposed by the Commission, though he declared that the weakness of the other Michigan roads provided no incentive to Pere Marquette security holders to effect the consolidation.³⁴ He thought the system ought to be strengthened by the addition of the Norfolk & Western, the Ohio Central lines, the Lackawanna and a portion of the Wabash, raising the system return to 5.4 percent of capital invested.³⁵ By contrast, the Ann Arbor objected—rather weakly—to its inclusion in System No. 6, and President Erb suggested the alternative of an Ann Arbor-Wheeling & Lake Erie-Western Maryland system to intersect the trunk lines and give them all an opportunity to secure trans-Lake traffic.³⁶

One of the most interesting developments in the hearings on Eastern roads was the new twist given the contest for the Jersey terminals by the testimony of officials of the Port of New York Authority. In its petition for admission to the proceedings it was pointed out by counsel for the Authority that nearly one-half of the nation's export-import traffic moves through New York, and that a large economic loss resulted from the necessity of carrying 85 to 90 percent of the tonnage coming to the Jersey shore across New York harbor in lighters. The dictum of Justice Harlan in the New York Harbor Case ³⁷ was quoted to

³³ Record, p. 8592.

³⁴ *Ibid.*, pp. 7891-7892.

³⁵ *Ibid.*, p. 7989. The system return was the ratio of aggregate net railway operating income to total investment in road and equipment as reported to the Interstate Commerce Commission for 1917.

³⁶ *Ibid.*, p. 11572.

³⁷ 47 I. C. C. 650.

show the need for a comprehensive policy in regard to the New York-New Jersey terminals.

There can be no justification, especially in time of national emergency, for a policy that permits certain terminals to be congested with a surplus of freight, while at the same time a nearby terminal has not enough traffic to keep it busy. It is necessary that the great terminals at the port of New York be made practically one, and that the separate interests of the individual carriers, so long as they remain an insuperable obstacle to any constructive plan of terminal development, be subordinated to the public interest.³⁸

It was indicated that as a result of the New York Harbor Case the States of New York and New Jersey, formerly at odds on policy in the port area, had entered into a treaty establishing the Port of New York Authority.

The focal point of interest of the Port Authority in the hearings on consolidation was the disposition of Belt Line No. 13 whose construction, according to counsel for the Authority, had recently been undertaken to relieve congestion in the port area. Not only was the vital interest of the Authority in the hearings on consolidation conceded by the Commission, but separate hearings on the New York terminal situation were conducted jointly by the Authority and the Commission.³⁹

Valuable testimony was also presented by Mr. Ramsey, Chief Statistician for the Authority, to show that the New York Central Railroad, if it succeeded in obtaining the terminals of the Central of New Jersey, would then have control of 52.4 percent of the waterfront on the Jersey shore in addition to its virtual monopoly of railroad trackage on Manhattan Island. From such a position it could perfect a scissors hold on the port facilities of New York, restricting other lines and negating the

³⁸ Brief for the Port of New York Authority, p. 463.

³⁹ Docket 14490, In the matter of Efficient, Economical and Joint Use of Terminals of Common Carriers in the Port of New York District and the Cost to Carriers of Operating the Terminals in Performing Common Carrier Service.

beneficial effect of the Authority's proposed belt line.⁴⁰ It was admitted by Mr. Cohen, Counsel for the Authority, that the Baltimore & Ohio lacked adequate terminal facilities; but, since the presidents of the New York Central and the Baltimore & Ohio had both indicated that trackage rights for their roads over the Jersey Central would be unsatisfactory, he thought that none of the trunk lines ought to get the terminal properties, but that their status of independent facilities in the port district should be maintained.⁴¹ After reviewing in a 403-page brief all the evidence in the hearings bearing on the New York port problem, counsel for the Authority finally requested "that such reservation of the terminal situation at New York be made as will promote the terminal unification which the Commission itself had recommended and which is required by the express terms of the Comprehensive Plan."⁴²

Another complicating factor in the eastern scene was the rivalry of the principal Atlantic ports. Each major port desired to be the terminus of as many systems as possible and feared that the merger of a local road with a larger system might result in the loss of business to another port on which the larger system was based. Several commerce groups of Philadelphia opposed System No. 3 on the grounds that placing the Reading with the Baltimore & Ohio would cause a diversion of traffic from Philadelphia to Baltimore. The proposed consolidation, it was asserted, would leave Philadelphia with only two railroads—the Pennsylvania and the Baltimore & Ohio—or "less systems of railroads than any other important port on the Atlantic or Gulf seaboard."⁴³ Though Philadelphia was the second port on the Atlantic coast in terms of tonnage handled, local groups claimed that the tentative plan provided it with only two sys-

⁴⁰ Record, p. 8790.

⁴¹ Record, p. 8896.

⁴² This refers to the Comprehensive Plan for the unification of terminals enacted into law by New York and New Jersey and recognized by the Commission. Cf. Brief for the Port of New York Authority, p. 392.

⁴³ Record, pp. 8658-8668.

tems as compared with 7 for Norfolk, 6 for New York, 4 each for Charleston, Savannah and Jacksonville, 3 for Baltimore and 2 for Boston and Portland. The Philadelphia interests proposed, therefore, that the Reading be left intact or consolidated with the Jersey Central into an independent terminal system.⁴⁴

Testimony of a similar character came also from local business and commercial groups throughout the eastern territory. These interests were generally alarmed over the possibility of losing trade to other centers or other business competitors. A representative of several small iron and steel companies in Pennsylvania, after attacking System No. 3, summed up the case for local interests as follows:

It appears a self-evident proposition that a relatively small, compact railroad system, such as the Philadelphia & Reading-Central Railroad of the New Jersey System, the officers of which are in close contact with local conditions, can better serve local industries on its line than a far-flung system traversing half a continent such as is involved in the Baltimore & Ohio-Philadelphia & Reading-Central Railroad of New Jersey-New York, New Haven & Hartford consolidation.⁴⁵

Anthracite coal operators in the Pennsylvania region opposed System No. 3 because of their concern lest this merger subordinate the Reading's anthracite trade to the bituminous coal traffic of the Baltimore & Ohio.⁴⁶ The Chambers of Commerce of Reading, Pennsylvania, Sunbury, Pennsylvania, and Trenton, New Jersey, expressed fear that the creation of System No. 3 would disrupt friendly relations with the Reading and reduce the bargaining power of local shippers by compelling them to deal with a large trunk line system.⁴⁷

⁴⁴ *Ibid.*, pp. 8671-8672.

⁴⁵ Record, p. 8745.

⁴⁶ *Ibid.*, p. 8642.

⁴⁷ *Ibid.*, pp. 8690, 8721, 8724.

NEW ENGLAND

In the hearings on consolidation of New England roads, the principal issue concerned the merits of a single system—the New England Plan—compared with affiliation of New England lines with the major systems in Middle Atlantic territory—the Trunk Line Plan. System No. 7 of the tentative plan embodied the regional idea, while the Commission had also left the door open for inclusion of the New Haven in System No. 3, Baltimore & Ohio, and the Maine roads in System No. 1, New York Central. A third alternative, that of a New England-Great Lakes combination, as proposed in System No. 7a, did not recommend itself to any of the interested parties.

Chief support for the New England Plan came from the New Haven Railroad, which had once tried to establish a regional monopoly on its own account. President E. J. Pearson of the New Haven agreed with Professor Ripley that there could be no equitable distribution of New England roads to the trunk lines and that a single system would improve the position of the region's industry. He thought, however, that *all* New England roads should be included in System No. 7 because (1) leaving the Boston & Albany with the New York Central would tend to give the latter a preferential position in New England affairs; and (2) the Central Vermont also should be considered a New England road, though the right of eminent domain might have to be employed, as in the case of the Boston & Albany, to sever the line from its parent company, since it was unlikely that separation would come about voluntarily.⁴⁸ President Pearson took the position that the question of finances underlay the entire New England situation. He hinted that valuation would assist in revitalizing the New Haven and would help to improve the rate of return of a New England system whose initial earnings would be rather low. If that were not enough, the Commission's power to deal with the matter of division of rates, a power delegated to the Commission by

⁴⁸ Record, pp. 8153-8155.

the Transportation Act, would permit it to raise the earning power of a single New England system.⁴⁹

Financial considerations were given more emphasis in the Report of the Joint New England Committee to the Governors of the New England States. This report, subscribed to all the New England states save New Hampshire, and widely distributed throughout the region, opposed trunk line affiliation, stating that:

New England would like to wear its own breeches. We submit that it should be allowed to do so unless a clear case be made out why one leg should be handed to the Pennsylvania Railroad, or the Baltimore & Ohio, and the other to the New York Central.⁵⁰

However, the Committee did not consider consolidation any solution to the New England railroad crisis, but called for—

rehabilitation of our two major systems so that they can be lifted out of their present acute difficulties, and give to New England industry and to the New England public the grade of transportation service that is vital if New England is to hold its place against the keen competition of other districts. Consolidation is not the immediate medicine needed by New England. Rehabilitation comes first.⁵¹

To accomplish the program of rehabilitation, the Committee called for adoption of the following measures: improved management; cooperation of employees; reduction of fixed charges by lowering interest payments, particularly on interest due the federal government; State guaranty of railroad bonds; and cooperation of the states in reducing taxes.

⁴⁹ The power of the Commission to proscribe divisions and so increase returns to New England roads was upheld by the United States Supreme Court in the New England Divisions Case, decided February 19, 1923 (261 U. S. 184).

⁵⁰ Joint Report to the Governors of New England, p. 193.

⁵¹ Joint Report to the Governors of New England, p. 208.

Some of the most favorable testimony for a single New England system came from President Willard of the Baltimore & Ohio. Having indicated that his road could not well afford to assume the burden of the New Haven, as proposed in the tentative plan, he felt that trunk line affiliation was out of the question. He presented many arguments for a single New England system, stressing the economies that could be effected and estimated that these economies would add \$2,000,000 annually to the net revenues of New England carriers.⁵²

Most of the opposition to the New England Plan, as well as most of the support for trunk line affiliation, came from northern New England, especially from the State of Maine. Counsel for the Boston & Maine disputed the claim that only regional consolidation would safeguard New England interests, arguing that no major road would be blind to the pecuniary gain resulting from efficient service in an important traffic area.⁵³ Denying that a single system would produce much economy in operation, the Boston & Maine contended that trunk line affiliation would provide the New England roads with ample rolling stock, would improve terminal facilities and solve the problem of a regional fuel supply. The Boston & Maine, therefore, favored inclusion in System No. 1 with the New York Central. Several large savings banks and insurance companies in the Boston area testified in favor of the trunk line plan, on the grounds that the latter would boost the value of New England rail securities.⁵⁴

President McDonald of the Maine Central introduced an alternative proposal for the Maine roads. He argued that the New England plan would eliminate competition without assisting the movement of traffic. The opposite would be true of trunk line affiliation, especially if northern New England were given another connection with the trunk lines. Such a route

⁵² Record, pp. 9144-9145.

⁵³ Brief for the Boston & Maine Railroad, p. 23.

⁵⁴ Record, pp. 10270-10271.

could be formed on the Maine Central, the Bangor & Aroostook, the Boston & Albany and the line of the Boston & Maine from Portland to Worcester.⁵⁵ President McDonald minimized the significance of the fact that this plan would carve a section 100 miles long from the heart of the Boston & Maine and hand it to the Maine Central. This proposal drew the support of other Maine interests, including the Port of Portland whose representatives expressed the fear that the New England Plan would give Boston preferential treatment.⁵⁶

None of the plans presented appealed to the Bangor & Aroostook, whose president, P. R. Todd, insisted that the road be left independent. He pointed out that his road had a monopoly of the territory it served, and was unique also in paying 7 percent on its preferred, and a small return on its common stock. The inclusion of the Bangor & Aroostook in a larger system, it was argued, would injure local interests and eliminate competition.⁵⁷

At this point it seems advisable to summarize the chief obstacles to consolidation which developed at the hearings on the tentative plan in the Eastern district. These may be listed as follows:

- (1) Unwillingness of the strong roads to part with lines which had been placed by the Commission in other systems;
- (2) Desire of strong roads to improve their position by absorbing strategic roads which had been assigned to competitors;
- (3) Reluctance of smaller roads to be combined in the proposed systems, the prosperous ones because they did not wish to lose by non-prosperous alliances, many because their executive officers feared to lose their positions by consolidating;
- 4) Ambitions of the chief Atlantic ports to become system termini;

⁵⁵ *Ibid.*, pp. 9399-9407.

⁵⁶ Record, pp. 9500, 9517, 9540, 9560.

⁵⁷ *Ibid.*, 8224-8257.

(5) Fear of smaller cities that consolidation would reduce them to way stations on large systems;

(6) Unwillingness of local commerce groups to risk losing special services received from a small road.

The same pattern of opposition was reproduced in hearings on the tentative plan in other sections of the country, varying of course with the peculiar conditions of each region. Only occasionally did a carrier, large or small, express satisfaction with the treatment accorded it by the Commission, and the other interested groups which appeared to testify at the hearings were as a rule hostile to the proposed consolidations. It would be tiresome to note in detail the many points at issue, but some of the major problems presented to the Commission at hearings on the plan for Southern and Western carriers should be indicated.

THE CHESAPEAKE REGION

In the hearings on roads in the Chesapeake Bay area, most of the discussion concerned the disposition of the Virginian Railway, which had been placed by Ripley with the Norfolk & Western and by the Commission with the Chesapeake & Ohio. President W. J. Harahan of the Chesapeake & Ohio supported the Commission's allocation of the Hocking Valley and the Virginian to his road for the following reasons: (1) The route thus formed from the Great Lakes to tidewater would be shorter and more economical than that of Norfolk & Western; (2) the Chesapeake & Ohio would willingly construct additional lines to make necessary connections with the Virginian; (3) a Norfolk & Western-Virginian union would monopolize terminals at Norfolk and Hampton Roads; (4) placing the Virginian and Chesapeake & Ohio together would preserve competition—between the New River and Pocahontas coal fields!⁵⁸ In making this last point, President Harahan admitted that the Virginian competed with his road at some 55 coal mines but argued

⁵⁸ Record, pp. 8308-8342.

that competition between coal fields was more important than competition between coal roads.

Representatives of the Norfolk & Western expressed displeasure over the severance of their road from the Pennsylvania and the lopping off of the Norfolk & Western's North Carolina lines, which had been allocated by the Commission to the Atlantic Coast Line-Louisville & Nashville system. But most of their criticism was leveled at the proposed merger of the Virginian with the Chesapeake & Ohio. President N. D. Maher of the Norfolk & Western countered the Chesapeake & Ohio arguments as follows: (1) the latter's route to the Lakes would not be any shorter or better graded than that of the Norfolk & Western; (2) a Chesapeake & Ohio-Virginian system would dominate Norfolk and Newport News terminals; (3) such a combination would also eliminate competition at many points in the coal fields.⁵⁹

The Norfolk & Western's case was strengthened by testimony of President C. W. Huntington of the Virginian. Although the latter preferred to be taken over by the New York Central, allegedly because of the advantageous route to the Lakes this association would afford, his second choice was an alliance with the Norfolk & Western. President Huntington contended that a great deal of work would have to be done on Chesapeake & Ohio terminals at Hampton Roads before they would be of use to the Virginian. On the other hand, he stressed the long-standing relations between his road and the Norfolk & Western and pointed to economies that could be effected by operating the Virginian and the Norfolk & Western as a double-track road between Roanoke, Virginia, and the West Virginia border.⁶⁰

THE SOUTHEAST

By contrast, relatively little opposition to the tentative plan developed at hearings on southeastern carriers, possibly because

⁵⁹ *Ibid.*, pp. 8386-8397, 11032-11036.

⁶⁰ Record, pp. 8367-8382.

consolidation was already well advanced in this region. The Southern had no objection to System No. 10 and the Atlantic Coast Line and Louisville & Nashville testified in favor of their merger in System No. 11.

Strangely enough, there was little contention at the hearings over the disposition of the Carolina, Clinchfield & Ohio, which had been placed by the Commission in either System No. 11 or No. 12 (Illinois Central-Seaboard). While Professor Ripley had mentioned the advantages which the Clinchfield would bring to System No. 11, his report had recommended its inclusion in System No. 10, Southern. Representatives of the Louisville & Nashville testified at the hearings in Washington, June 15-19, 1922 that the Clinchfield would afford a needed link between the eastern and western parts of System No. 11 and would provide them with a coal route; but the Southern offered no testimony to justify the placing of the Clinchfield in System No. 10. Subsequently, on May 11, 1923, applications were filed by the Louisville & Nashville and the Atlantic Coast Line, seeking approval from the Commission of a 999-year lease of the Clinchfield.⁶¹ At the final hearings in Washington, during January 1924, both the Seaboard and the Southern contested this application. Representatives of the Seaboard contended that their road needed the Clinchfield as a coal route and that placing it in System No. 11 would eliminate competition in the Carolinas.⁶² Representatives of the Southern argued that their road would be deprived of an important fuel route and connection between two main parts of the Southern system, and presented evidence to show that the Southern interchanged more traffic with the Clinchfield than did any other carrier.⁶³

The Commission's plan to unite the Illinois Central and the Seaboard in System No. 13 was acceptable to neither of these

⁶¹ Finance Docket 3131.

⁶² Record, pp. 10891-10893.

⁶³ *Ibid.*, p. 12148. For the decision on the Clinchfield lease, see Chapter VI.

carriers. The Seaboard wished to remain independent,⁶⁴ while the Illinois Central pleaded that it did little business with the Seaboard either directly or through its subsidiary, the Central of Georgia. It was also argued by counsel for the Illinois Central—and this had been pointed out in the Ripley report—that the proposed merger would eliminate competition at a number of points in Georgia and Alabama between the Seaboard and the Central of Georgia.⁶⁵ Another objection interposed by the Illinois Central was directed against the assignment to its system of the Tennessee Central. It was recalled that the latter road had been disposed of at a loss by the Illinois Central in January 1922, and the point made that this should be sufficient argument against its being returned to the Illinois Central in any consolidation scheme.

With one or two exceptions, there was little reaction from traffic centers or local commerce groups in the South to the tentative plan. An important exception was the City of Mobile, which entered a brief protesting the grouping of the Mobile & Ohio in System No. 10, Southern. It was charged that the Southern, serving both Mobile and New Orleans, had consistently favored the latter port; should the proposed merger be carried out, city officials feared that port competition along the Gulf would be brought to an end.⁶⁶

THE WESTERN TRANSCONTINENTAL REGION

Hearings on Western roads covered not only the transcontinentals west of the Mississippi—Systems No. 13 through 17 in the Commission's Plan—but those roads which Professor Ripley and the Commission had placed in the two southwestern systems, Nos. 18 and 19 in the Tentative Plan. At these hearings, testimony was unusually voluminous and briefs exceptionally long, so that only a partial description of the

64 Record, pp. 201-202. Brief of the Seaboard Air Line Railway Co., pp. 8-14.

65 Brief for the Illinois Central, pp. 25-32.

66 Brief for the City of Mobile, pp. 2-14.

problems presented in the hearings may be given here. These problems were: (1) the disposition of several of the weaker transcontinental routes, chiefly the St. Paul and the Western Pacific-Denver & Rio Grande Western route; (2) the proposed dismemberment of the Hill railroads; (3) the allocation of strategic roads such as the Colorado & Southern; (4) the creation of the two separate Southwestern systems.

It will be recalled that Professor Ripley had singled out two of the seven rail routes through the Rockies as requiring the support of stronger roads. The first of these, the Western Pacific-Denver & Rio Grande Western route, he planned to strengthen by merger with the Burlington and Northern Pacific; and the second weak route—that of the St. Paul—he proposed to support with the Great Northern, which was carved out of the Hill empire. The tentative plan, however, placed the Denver & Rio Grande Western, the Colorado & Southern and the Western Pacific with the Santa Fe in System No. 16, but accepted Ripley's recommendation on the northwest roads.

The Burlington led the attack for the Hill lines against the dismemberment proposed in the tentative plan. In a 140-page brief, accompanied by 301 pages of evidence, counsel for the Burlington charged that the Commission's proposals contemplated a complete dislocation of existing routes and channels of trade, in violation of statutory requirements.⁶⁷ A long history of the Hill system and considerable data on interchange were presented to show the close relations of the Burlington, the Great Northern and the Northern Pacific, and the injury that would result to the Burlington through loss of its connections with the Great Northern. On the other hand, the charge was made that the Burlington's rivals had been treated generously in the Tentative Plan: the Santa Fe had been presented with the valuable Colorado & Southern properties; the Union Pacific's position had been improved by addition of the North Western and the Wabash lines west of the Mississippi; and the Southern Pacific had received the Rock Island. Moreover, there were

⁶⁷ Brief for the Chicago, Burlington & Quincy, pp. 3-5.

signs that the Harriman system might be revived in an agreement recently entered into by the Union Pacific and the Southern Pacific, settling the status of the Central Pacific and giving the Union Pacific access to traffic originating along the lines of the Central Pacific.⁶⁸

President Holden of the Burlington presented an alternative plan at the hearings which called for four large railroad groups to replace those suggested by the Commission for the western region.⁶⁹ Group I included the Hill lines, the Chicago Great Western, the Colorado & Southern and choice lines in the Southwest. In Group II were placed the Santa Fe, the North Western, the St. Paul, the Soo Lines, the Western Pacific and the Denver & Rio Grande Western (one-half interest). Group III was composed of the Southern Pacific, the Central Pacific, the Rock Island, the Missouri Pacific, some southwest roads and the Denver & Rio Grande Western (one-half interest). The Union Pacific was included in Group IV with the St. Paul, the Frisco and several other southwestern lines. Holden asserted that there was no need for distinct southwestern systems and argued that the size and geographic extent of the four systems proposed would not be prohibitive, since larger systems in terms of volume of traffic already existed, and since management could readily develop the successful handling of these extended systems.

Judge R. S. Lovett of the Union Pacific stoutly contested the Holden Plan. He argued: (1) it was a scheme to strengthen the Hill combination and weaken the Harriman lines; (2) it shifted the St. Paul onto the Union Pacific for an eastern connection, while the North Western, more closely associated with the Union Pacific, was given to the Santa Fe; (3) the Union Pacific had little use for the Alton, the Frisco and the other southwestern lines assigned it in the Holden Plan; (4) the Southern Pacific system, with the Central Pacific and the Den-

⁶⁸ Record, pp. 2619-2621.

⁶⁹ *Ibid.*, pp. 3232-3299.

ver & Rio Grande Western, and the Santa Fe system, with the North Western and other Granger connections, were the last links in a chain drawn around the throat of the Union Pacific. Judge Lovett asserted that he had no objection to the retention of the Hill system, but thought that if that combination were to be permitted, the Harriman group should in all fairness be reestablished.⁷⁰

Mr. Walker D. Hines, attorney for the Great Northern, supported the Holden Plan, adding that Ripley's original reason for the disruption of the Hill lines—to provide support for the Western Pacific-Denver Rio Grande Western route—had disappeared, inasmuch as these roads had been given the Santa Fe in the tentative plan.⁷¹ The argument was also advanced that the Commission should not be averse to maintaining the strong Hill combination in the West, while permitting the New York Central and the Pennsylvania to dominate the Eastern situation.

In the Ripley report it had been stated that "fair and proper treatment for the St. Paul is the core of the western situation."⁷² Judging by the actions of the various western roads, however, the "core" was rotten, and the chief idea of all concerned was to get rid of it to the other fellow. Professor Ripley and the Commission had placed the St. Paul with the Great Northern, largely because of the latter's superior earning power and because competition would be less diminished by such a move than if the road became the partner of the Northern Pacific. In a 157-page brief, counsel for the Northern Pacific expressed their pleasure at the allocation of the St. Paul to the Great Northern and at their own union with the Burlington. By contrast, after laboring in a 187-page brief to prove that the Hill properties should be left intact, Mr. Hines and Mr. Countryman submitted another brief of 171 pages proposing that the St. Paul

⁷⁰ Brief for the Union Pacific, pp. 41-48.

⁷¹ Brief for the great Northern Railway in Docket 12964, pp. 32-33.

⁷² Record, p. 10875.

be wedded to the Northern Pacific. To which the Northern Pacific replied in a 20-page brief, asserting that the union proposed by the Great Northern would be illegitimate. Finally the Great Northern produced a 55-page reply brief "In Opposition to Choice of Great Northern rather than Northern Pacific for Separation from Burlington and Association with St. Paul." The briefs recited voluminous testimony given by presidents, engineers and other officers of northwest railroads as to the effect of the proposed alliances with the St. Paul upon competition, existing commercial channels, and rates of return, and presented numerous statistics purporting to show the economies that might be effected if the St. Paul were merged with the other northwest road.

Among the alternatives which commended themselves to counsel for the Great Northern was the following: "It would be more reasonable and practical, more beneficial to the public, and far less injurious and unjust, to put the St. Paul with the Union Pacific and make the other necessary alignments than to disrupt the Burlington-Great Northern-Northern Pacific group."⁷³ A few pages later the brief made the point that the Illinois Central could not be ignored in a comprehensive plan for western territory, and that merging it with the St. Paul would create "an admirable and complementary system."⁷⁴ Approval for the merger of the St. Paul with the Union Pacific was also expressed by counsel for the Northern Pacific.

Representatives of the Union Pacific lost no time in pointing out that the St. Paul afforded a poor Granger connection for their road and asserted that the latter's strength would be unequal to the task of supporting both the Wabash lines west of the Mississippi and the St. Paul. Judge Lovett argued that if the Holden Plan were to be adopted, the St. Paul should be given to the Santa Fe rather than to the Union Pacific, so as to put the Santa Fe into the Northwest "where it could continue to

⁷³ Brief for the Great Northern, p. 109.

⁷⁴ *Ibid.*, p. 162.

compete with the Hill lines and with the Union Pacific-Southern Pacific combination upon terms of equality—even more than equality—with the Union Pacific because it would have a shorter line except at Portland.”⁷⁵ As for the St. Paul, its president, Mr. Byram, favored union with the Great Northern because the two roads supplemented each other, permitting significant economies in operation to be realized.⁷⁷

Another storm centered around the strategic Colorado & Southern and its prosperous subsidiary, the Ft. Worth & Denver City. Unlike the St. Paul, these roads were considered worthy prizes by the transcontinentals. It will be recalled that Professor Ripley had sidestepped the difficult choice of a western system for these roads and had placed them with a neutral carrier, the Missouri Pacific; the Commission, however, had changed this by placing them in System No. 16, Santa Fe. The Burlington objected strenuously to being deprived of the Colorado & Southern and argued that the latter's inclusion in the Santa Fe system would tend to suppress competition in Southern Colorado and Northern Texas.⁷⁷ The attitude of the Santa Fe was expressed by President Storey: he had not asked to be given the Colorado & Southern properties but was willing to accept them and thus secure a shorter route from the coal fields of Colorado to the north Texas gateways; but he did not care to see the Santa Fe extended north of Denver by inclusion of the entire Colorado & Southern system.⁷⁸ However, particularly vociferous opposition to the proposed consolidation of the Colorado & Southern properties with the Santa Fe came from commercial groups located along the right of way of the Colorado & Southern all the way from Wyoming to Texas.⁷⁹ Their argu-

⁷⁵ Record, pp. 4156-4157.

⁷⁶ *Ibid.*, pp. 1078-1081.

⁷⁷ Record, p. 2518.

⁷⁸ *Ibid.*, p. 2485.

⁷⁹ *Ibid.*, pp. 5011, 5018, 5026, 5070, 5205, 5718-5725, 5743, 5704, 5806, 5820, 5831. Briefs for the Texas Railroad Commission, Texas Chamber of Commerce, Texas Industrial Traffic League, West Texas Chamber of Commerce, in Docket 12004.

ment centered on the theme that existing competition in the territory would be eliminated by such a consolidation.

THE SOUTHWEST

Undoubtedly, the greatest opposition to the tentative plan on the part of local interests developed in connection with the southwestern roads. The criticism of the proposed merger of the Colorado & Southern properties in System No. 16 has already been mentioned. Equally considerable protests were raised against the creation of System No. 18, Frisco-Katy-Cotton Belt, and System No. 19, Chicago-Missouri Pacific. Representatives of St. Louis and Kansas City industries and various Texas interests charged that consolidation of the Frisco, Cotton Belt and Katy would eliminate competition between St. Louis and Kansas City, and between St. Louis and northern Texas.⁸⁰ Both Kansas City and St. Louis protested the termination of all the western and southwestern systems at Chicago, on the grounds that that terminal was already overloaded; moreover, Kansas City objected to the choice of Chicago and St. Louis as system termini, fearing that its traffic would be undermined by the other two cities.⁸¹ The opinion was often expressed that the southwest roads had been treated as left-overs from other systems and had been grouped together because nothing else could be done with them. Some witnesses asserted that it was unreasonable to believe that either System No. 18 or No. 19 could compete successfully with such giants as the Santa Fe or the projected Southern Pacific-Rock Island combination.

Several alternative dispositions of southwest roads were presented to the Commission at the hearings. The Southern

80 Briefs for the St. Louis Chamber of Commerce, Public Utilities Commission of the State of Kansas, and the Texas Railroad Commission, Texas Chamber of Commerce, Texas Industrial League, and West Texas Chamber of Commerce.

81 Briefs for the St. Louis Chamber of Commerce, and Public Utilities Commission for the State of Kansas.

Pacific suggested that the Katy be taken from System No. 18 and merged with the Kansas City Southern and the Gulf Coast Lines to form a third southwest system; but the obvious result of this move would have been an enhancement of the Southern Pacific's own competitive position in the area. As previously mentioned, the Holden Plan proposed to carry the northern transcontinentals to the Gulf, thus creating four large systems west of the Mississippi instead of the Commission's seven. A third plan presented by Professor W. M. W. Splawn in behalf of the Texas interests retained the idea of seven systems for the West—including the Illinois Central—but distributed western roads in such a way as to have six of these systems competing for southwest traffic.⁸² The major roads composing the seven Splawn systems were:

- I. Burlington, Great Northern, Northern Pacific, Colorado & Southern, St. Louis-San Francisco, Chicago Great Western.
Mileage: 35,789 Rate of return: 5.44
- II. Union Pacific, Chicago & Northern Western, Missouri-Kansas-Texas, Kansas City Southern, Chicago, St. Paul, Minneapolis and Omaha.
Mileage: 24,237 Rate of return: 5.32
- III. Santa Fe, Denver & Rio Grande Western, Western Pacific, Northwestern Pacific.
Mileage: 15,767 Rate of return: 5.13
- IV. Southern Pacific, Rock Island, El Paso & Southwestern, Midland Valley, St. Louis Southwestern.
Mileage: 23,980 Rate of return: 4.73
- V. Missouri Pacific, Texas & Pacific, Kansas City Southern, Gulf Coast Lines, International-Great Northern, Chicago & Eastern Illinois, Kansas, Oklahoma & Gulf.
Mileage: 15,085 Rate of return: 3.51

⁸² Record, Exhibit No. 942. Testimony of Professor Splawn, pp. 10861-10884.

- VI. Illinois Central, Yazoo & Mississippi Valley, Central of Georgia, Tennessee Central, Gulf Coast Lines.

Mileage: 9,532 Rate of return: 4.85

- VII. Chicago, Milwaukee & St. Paul, Minneapolis, St. Paul & Sault Ste. Marie, Spokane, Portland & Seattle, Duluth & Iron Range, Duluth, Missabe & Northern.

Mileage: 21,738 Rate of return: 4.67

The chief object of Professor Splawn's plan was to increase competition in the Southwest, a project very close to the heart of the Texas interests. The Hill system was brought to the Gulf over the lines of the Frisco, and by the allocation of the Katy and Kansas City Southern, the Union Pacific was brought into competition with the Burlington from Missouri points to the Gulf. The Santa Fe and Southern Pacific-Rock Island systems represented worthy rivals for the first two groups in Central Western territory and both these systems competed with the Union Pacific in the Far West. It should be pointed out that the Central Pacific issue was ignored in the Splawn Plan, and the Colorado & Southern properties were kept from becoming an issue by leaving them in the Burlington system.

Only one local system for the Southwest was incorporated in the Splawn Plan—that of the Missouri Pacific. It was stated, however, by Professor Splawn that his fellow Texans were—

not at all in agreement with the proposal that because the Missouri Pacific *is in existence* and it is easy to build around a Southwestern group, that there should be two Southwestern groups. Rather they think that the Missouri Pacific west of the Mississippi River might be comparable to the Illinois Central East of the Mississippi River, or that it could be grouped with the St. Paul as a part of a great transcontinental system.⁸³

As previously mentioned, very little of the testimony recorded at the hearings was directed towards the subject of valuation. However, on two different occasions, the relation of valuation to consolidation was posed as a problem demanding considera-

tion by the Commission. At the hearing on Western roads, Commissioner Campbell asked the following question of Chairman Lovett of the Union Pacific: "May there not be a valuation for rate-making purposes and another value for purposes of consolidation?"⁸⁴ The witness thought such an interpretation of the statute might be possible. At the final hearings, Professor Splawn referred to this testimony and gave it as his opinion that the values established for rate-making purposes by the Commission's Bureau of Valuation could not serve as a basis for determining the exchange value of railroads which might be consolidated.⁸⁵ He pointed out that the law directed the Commission, in adopting its consolidation plan, to equalize rates of return as related to values. Since no inquiry had been made as to values in the hearings, Professor Splawn did not believe any plan prepared by the Commission on the basis of the record would comply with the statutory requirement.

Finally, the testimony of the National Industrial Traffic League is noteworthy. Mr. C. E. Childs stated that the League favored repeal of paragraphs (4), (5), (6) and (8) of Section 5 of the Transportation Act, all bearing on the consolidation plan, and substitution of the provision that consolidations found to be in the public interest might be allowed by the Commission. Mr. Childs could see no reason for haste in preparing any final plan of consolidation and declared that the League was in doubt "whether it would be possible to devise any plan involving the formation of mammoth systems of railroads substantially larger than the principal systems at present existing such as the New York Central, Pennsylvania, Southern, Santa Fe and Southern Pacific, and at the same time preserve competition and maintain existing routes and channels of trade."⁸⁶

Having collected a voluminous record, the Commission closed the hearings on January 12, 1924, and undertook consideration of the evidence upon which it was to base its complete plan.

⁸⁴ *Ibid.*, p. 4185.

⁸⁵ Record, p. 12148.

⁸⁶ *Ibid.*, p. 11702.

CHAPTER VI

RAILROAD CONSOLIDATION, 1920-1929

THE COMMISSION AND THE PLAN

THE barrage of criticism directed at the tentative plan placed the Commission in a most difficult position. Railroads, shippers, public officials and commercial associations located in every section of the country registered their objections to the plan, manifested such divergent and hostile interests that it appeared impossible to work out any arrangement that could satisfy a major share of the participants. The failure of the plan to attract support made a deep impression upon members of the Interstate Commerce Commission. In August 1921, Commissioner Mark Potter had been among those voting for adoption of the tentative plan. But by January 1924, Commissioner Potter had changed his mind, had become convinced as a result of the hearings that issuance of a complete plan of consolidation would not be helpful. In a lengthy memorandum to President Rea of the Pennsylvania,¹ Commissioner Potter took a gloomy view of the entire matter :

It is certain that if the tentative plan were to be adopted as the complete plan, the opposition, both of carriers and the public, would prevent its adoption in any considerable part. If we discard it and guess again, I am not hopeful that the result will be any more satisfactory. Those now on the Commission who favored the adoption of the tentative plan when it was adopted constitute less than a majority of the Commission. It is hardly conceivable that the Commission will be unanimous or anything like it in adopting any plan. I think it is more than likely that if a plan is adopted, it will be adopted by a majority of not more than one or two votes, because necessarily there are so many differences of opinion on this subject.

¹ *Railroad Consolidation in the Eastern Region*, Investigation of Railroads, Holding Companies and Affiliated Companies, Additional Report of the Committee on Interstate Commerce (74th Cong., 1st Sess.), Part 3, Exhibit C-1451.

It seems to me it will be unwise to force any plan so adopted onto reluctant carriers and security holders. I cannot believe that any consolidation scheme can be put through unless it has its appeal and is satisfying to railroad people and their security holders.

From a practical standpoint, the Commission had to choose among three courses of action, none of them particularly inviting. The Commission, first of all, might have decided to frame a second tentative plan. But after two long years and several hundred thousand dollars² spent in gathering testimony and evidence on one plan, the prospect of preparing and holding hearings on another was not one to be viewed with enthusiasm. Moreover, as Commissioner Potter observed, the second plan would probably encounter the same storm of opposition as the first, and prove equally unacceptable to those interests whose cooperation was required in order to carry out consolidation on a voluntary basis. A second and more obvious procedure was to conform to the mandate of the Transportation Act and adopt a complete plan. But this might turn out to be worse than an empty gesture, for the Commission had no power to compel adherence to that plan, and it was possible that the carriers would by this action be prevented from bringing to fruition many desirable combinations which did not harmonize with the adopted plan.³ To make the complete plan effective, the Commission would have to request Congress for authority to make consolidation compulsory. Such a request, even if the Commissioners were willing to make it, would undoubtedly precipitate stiff fights on Capitol Hill and in the courts. The third alterna-

² There is, of course, no estimate of costs in any particular Commission proceeding. But the expenses involved in holding hearings over a period of two years, in amassing Docket 12906 and in its consideration by Commissioners and other personnel, undoubtedly ran into several hundred thousand dollars.

³ Section 5(6) of the Act authorized consolidation provided the transaction was "in harmony with and in furtherance of the complete plan of consolidation."

tive was to shelve the plan and merely permit the railroads to enter into combinations of their own choosing, subject to the approval of the Commission. This meant asking Congress to abandon a policy of integration which had been enacted into law less than four years before the close of hearings on the tentative plan, a change which the lawmakers seemed to be in no mood to make.

As a matter of fact, certain high-ranking members of the Administration and Congress were currently suggesting consideration of legislation to induce or compel the railroads to put through the consolidations which the Commission might propose in its formal plan, or acceptable alternatives. Prominent among these were Senator Cummins, Chairman of the Senate Committee on Interstate Commerce, Herbert Hoover, then Secretary of Commerce, and the President himself. In a widely-publicized speech delivered at Kansas City⁴ on June 22, 1923, President Harding voiced his opposition to government ownership of railroads and vigorously supported consolidation, stating that the next step would be to simplify the provisions of the Transportation Act so as to "stimulate the consummation" of projected consolidations. This statement was taken to mean that the President favored compulsory consolidation,⁵ and produced significant reaction in certain quarters. Mr. S. Davies Warfield, President of the National Association of Owners of Railroad Securities, lauded the President's desire to see progress made in effecting consolidations, but opposed any form of compulsion, recalling that the Association he represented had consistently urged that consolidations "be made permissive,

4 An article in the *St. Louis Post-Dispatch* (June 25, 1923) commended the President's "gunption" for advocating the consolidation plan in Kansas City, "whose interests were against it," but noted that this part of the speech was heard in silence.

5 The *New York Times* (June 24, 1923) remarked editorially: "He seems to contemplate asking Congress to make the consolidations mandatory instead of, as they are now, merely permissive. That there are enormous difficulties in the way of such legislation he tacitly concedes, but still is full of hope that the wisdom of Congress and the sagacity of some new tribunal to be set up will be equal to the task."

approved by the Commission in each case, not held to rigid plans now to be announced as the present act requires.”⁶ An editorial in the *Traffic World*⁷ also criticized the President’s stand on consolidation:

We think the principal danger from the speech of President Harding is the credence that will be given to his insistence that consolidation or some other radical plan must at once be adopted to cure the railroad situation or the country will be confronted with government ownership. There was a time not so long ago when this sounded more or less true, but that time has passed, apparently, and the transportation situation seems in danger as much from the friends of sound conditions—like President Harding or Senator Cummins—as from the enemies of sane economies—like Senator Brookhart and Senator La Follette.⁸

Following the death of President Harding, President Coolidge took up where his predecessor had left off. On December 3, 1923, in his first message to Congress,⁹ Mr. Coolidge observed that existing consolidation laws were not proving effective and recommended additional legislation “to aid and stimulate” consolidations voluntarily undertaken by the railroads, subject to the approval of the Interstate Commerce Commission. His idea was that the Commission should be empowered to appoint committees representing the public and the railroads with power to negotiate with the security owners of each group of railroads whose consolidation was proposed for an exchange of securities on such terms and conditions as

⁶ *New York Times*, June 24, 1923, II, 11. President Rea of the Pennsylvania also issued a statement attacking the suggestion that consolidations be brought about compulsorily.

⁷ *Traffic World*, June 30, 1923, XXXI, 1533-1535.

⁸ Senators Brookhart of Iowa and La Follette of Wisconsin were outspoken advocates of government ownership of the railroads.

⁹ Annual Message of the President of the United States to a Joint Session of the Senate and House of Representatives, December 3, 1923 (68th Cong., 1st Sess.), H. Doc. 1.

the Commission might prescribe for avoiding confiscation and preserving fair values. Should this permissive scheme of consolidation prove ineffective after a limited period, President Coolidge continued, the authority of the government would have to be directly invoked.

A bill embodying the President's recommendations was introduced by Senator Cummins early in 1924.¹⁰ This bill proposed a seven-year period during which the railroads would be permitted to carry out voluntarily the systems adopted by the Commission in its tentative plan, or alternative systems which the Commission might approve, and offered the railroads inducements to combine, such as federal incorporation and powers of condemnation of minority securities. At the end of this trial period, coercive measures were to be adopted, including the establishment of committees to further the completion of individual systems and the adjustment of rates by the Commission so that within each incompleated system all roads would enjoy practically the same return, thus approaching the condition which would exist if the roads were consolidated. It was common knowledge that Secretary of Commerce Hoover had assisted in the preparation of this bill,¹¹ and Mr. Hoover testified in its support in May 1924.¹² The Secretary stressed the desirability of consolidation and the need of the "inducements" contained in the Cummins Bill, which he preferred to the outright use of compulsion, since the latter, he thought, would involve the government in railroad ownership through condemnation. Mr. Hoover had previously expressed his belief that consolidation required further stimulation in a speech

¹⁰ S. 2224.

¹¹ *Railway Age* (February 2, 1924), LXXVI, 331-335. Mr. Dwight Morrow, of J. P. Morgan & Co., told President Rea that President Coolidge's railroad views originated with Secretary Hoover. *Railroad Combination in the Eastern Region*, p. 1183, footnote.

¹² Hearings before the Senate Committee on Interstate Commerce on S. 2224 (68th Cong., 1st Sess.), 1924, pp. 14-37.

before the National Transportation Conference,¹³ held under the auspices of the United States Chamber of Commerce in Washington, D. C., on January 1924, and in an article in the *Saturday Evening Post* which provoked considerable discussion.¹⁴ Following Secretary Hoover's testimony no further hearings were held on the Cummins Bill until 1925, since the Committee wished to give the railroads a chance to go ahead with their own merger plans and the Commission an opportunity to work out its complete plan.

Those who contended that the railroads could be expected to carry out a large number of consolidations of their own accord, and without the legislative prodding recommended by Senator Cummins and Secretary Hoover, appeared to have their views confirmed by the sharp increase in combination activity in 1923 and 1924. The first two years of the Transportation Act were years of depression and readjustment, and railroad traffic and revenues dropped well below the levels of 1920.¹⁵ But in 1923 and 1924, business picked up, railroad net income reached new peaks,¹⁶ and a large number of acquisitions of rail properties were made. In 1921 and 1922 less than 900 miles of independent roads, most of them located in the north central and southwest regions, were absorbed by other carriers.¹⁷ But the Commission approved the acquisition of

13 The Conference adopted the following declaration of policy:

"Consolidations should be in harmony with natural evolution in the grouping of railroads, and full opportunity should be given carriers to consolidate by voluntary action, subject to the approval of the Interstate Commerce Commission, before measures are considered looking to compulsory consolidation."

14 "Railroad Consolidation" by Herbert Hoover, *Saturday Evening Post* (February 9, 1924), p. 6.

15 Revenue ton miles of Class I railroads fell from 410 billion in 1920 to 307 billion in 1921, and climbed slowly to 339 billion in 1922. Net income, following a similar course, was \$431,000,000 in 1920, \$314,000,000 in 1921, and \$370,000,000 in 1922.

16 Ton-miles were 412 billion in 1923 and 388 billion in 1924; net income totaled \$555,000,000 and \$558,000,000, respectively.

17 The bulk of this mileage was represented by five acquisitions: the Chicago, Terre Haute & Southeastern (298 miles) and the Chicago, Milwau-

3,348 miles of road in 1923, and nearly 8,000 miles in 1924, with activity distributed throughout the entire country.¹⁸ A writer in the *Railway Age*,¹⁹ reviewing combinations effected under the Transportation Act up to December 1924, observed that, while some acquisitions had been made in accordance with the tentative plan and for reasons described in that plan, others had been completed which clearly deviated from the tentative plan,²⁰ and created new situations not foreseen in that plan. Concluded the writer:

It is decidedly questionable whether or not the final plan of the Commission when published will be of any great service in facilitating consolidation under the Act. The railroad situation is a dynamic one. A final plan which may be practicable at one time may be entirely unsuitable to conditions existing a short time thereafter. It seems advisable to permit the carriers to work out their plans voluntarily under the supervision of the Interstate Commerce Commission.

More than a year elapsed between final hearings on the tentative plan and the announcement of the Commission's deci-

kee & Gary (108 miles) by the Milwaukee; the Evansville, Indianapolis & Terre Haute (134 miles) by the Big Four; the Wisconsin-Northern (134 miles) by the Soo Lines; and the Arizona & New Mexico (108 miles) by the El Paso and Southwestern.

18 Even excluding the acquisitions of the Van Sweringens, which were effected for the most part in 1923 and 1924, this represents the greatest amount of mileage taken over in any two years of the Transportation Act. Acquisitions approved by the Commission in 1923 and 1924 included the Central Pacific (3,325 miles), the Denver & Rio Grande Western (2,604 miles), the Texas & Pacific (1,648 miles), the International-Great Northern (1,160 miles), the El Paso & Southwestern (1,140 miles), the Gulf Coast Lines (900 miles) and the Clinchfield (277 miles).

19 J. H. Grodinsky, "Progress of Consolidation Since the Act of 1920," *Railway Age*, December 6, 1924, LXXVII, 1021-1024. Dr. Grodinsky was at that time instructor of transportation at the University of Pennsylvania.

20 These were given as the acquisition by the New York Central of the Toledo & Ohio Central, which the tentative plan had severed from the New York Central and assigned to the Norfolk & Western, and the acquisition of the Denver & Rio Grande, assigned to the Santa Fe, by the Missouri Pacific.

sion regarding issuance of a complete plan. During this time a subcommittee headed by Commissioner Hall struggled to evolve a plan for adoption by the full Commission. Despite the formidable difficulties of the assignment, this subcommittee made some headway, for Commissioner Hall informed Senator Cummins that he expected to report a plan by the summer of 1924.²¹ But this project must have run into trouble, for no plan was forthcoming that summer, or fall, and in its annual report to Congress for 1924, the Commission merely announced that the work of preparing a complete plan was continuing. More than likely, the Commission decided to postpone judgment on the plan in anticipation of a settlement of differences among the eastern carriers. Members of the Commission actually held two conferences with the trunk lines, the first on October 11, 1924, and the second on January 26, 1925, in an effort to bring the parties together in a four-way agreement which could be incorporated as a part of the complete plan. However, they were unable to break the deadlock among the carriers, and shortly thereafter the Commission made known its stand on the consolidation plan.

The Commission's decision was announced in a letter dated February 5, 1925, and directed to the Chairman of the Senate Committee on Interstate Commerce.²² In it a majority of the Commission pointed out the difficulties of mapping out an acceptable and well-defined plan and asked to be relieved altogether of the duty of promulgating a complete plan. Instead, the letter recommended that consolidation be allowed to proceed "in a more normal way," that is, at the initiative of the carriers, subject only to the approval of the Commission. This letter also suggested a series of legislative amendments to Section 5 of the Transportation Act designed to facilitate voluntary combinations. The conclusion of the Commission with respect to the consolidation plan was stated as follows:

²¹ Hearings before the Senate Committee on Interstate Commerce on S. 2224 (68th Cong., 1st and 2d Sess.), 1925, p. 89.

²² *Annual Report of the Interstate Commerce Commission*, 1925, p. 13.

The experience which we have gained . . . has led us to doubt the wisdom of the provisions of the law which now require us to adopt a complete plan for the consolidation of the railway properties of the continental United States into a limited number of systems, to which plan all future consolidations must conform. The differences of opinion which have developed, both without and within the Commission in regard to the form which such a complete plan of consolidation should take are so numerous and so difficult to reconcile with the limited insight into the future which in the nature of things is possible, that a majority of the Commission have been impelled to the belief that results as good, and perhaps better, are likely to be accomplished with less loss of time if the process of consolidation is permitted to develop, under the guidance of the Commission, in a more normal way.

Congress, however, did not see fit to act upon this recommendation of the Commission, although a bill designed to relieve the Commission of the duty of adopting a complete plan was subsequently introduced in Congress and received the backing of the railroads and other influential interests.²³ In 1926, and in each of the two following years, the Commission repeated the request that the law requiring the adoption of a complete plan be amended, but this was not done.²⁴ Finally, in December 1929, nearly ten years after the passage of the Transportation Act, the Commission published a complete plan of consolidation.

RAILROAD COMBINATION IN THE 1920'S

Between 1920 and 1930 a number of important changes in the pattern of railroad control took place. These were not "consolidations," for the Commission held that no consolidation

²³ H. R. 11212 (69th Cong., 1st Sess.).

²⁴ In its report to Congress for 1926, the Commission stated:

"The need for amendment in this and other respects has been developed in hearings before the appropriate committees of both houses of Congress and so generally recognized that, pending action thereon, we have deferred adoption and publication of a complete plan." *Annual Report of the Interstate Commerce Commission*, 1926, p. 13.

could be accomplished under the Act until after the publication of its complete plan,²⁵ but "acquisitions of control" executed under paragraph (2) of Section 5 of the Act. This paragraph permitted one carrier to obtain control of another by lease, stock ownership, or any method falling short of complete consolidation, provided the transaction met with the approval of the Commission. The acquisitions of control made by the railroads sometimes followed the systems proposed in the tentative plan, occasionally created alignments at variance with the tentative plan but which nevertheless received the Commission's sanction because of their advantages from the standpoint of transportation, or for other reasons. In a few cases, control was exercised through holding companies and was not brought before the Commission for review since the Transportation Act had failed to extend the Commission's authority to include acquisitions made by holding companies. Though activity was not confined to any one section of the country, by far the most spectacular growth of combinations occurred among the trunk lines.

EASTERN REGION

The report on railroad combination in the eastern region made by the Senate Committee on Interstate Commerce in 1940²⁶ distinguishes two periods of carrier activity during the 1920's: ²⁷ the first, lasting from 1920 to 1925, a period of watchful waiting and careful maneuvering until the Commission's request to be relieved of the duty of issuing a complete plan of consolidation; the second, coinciding with the boom of the late 1920's, a period of aggressive grabbing of railroad properties. Throughout the first phase the initiative in consolidation was for the most part with the Commission; in the second phase, the railroads took matters very largely into their own hands.

²⁵ *Control of Big Four by New York Central*, 72 I. C. C. 96 (1922).

²⁶ See footnote 1.

²⁷ Part 2, pp. 577-578.

The trunk line situation was recast during the first five years of the Transportation Act as a result of the activities of two Cleveland promoters, the Van Sweringen brothers.²⁸ In 1916, by the down-payment of \$2,000,000, every cent borrowed, and by the penning of notes to the extent of \$6,500,000, the Van Sweringens purchased the Nickel Plate from the New York Central.²⁹ In 1921, the Van Sweringens acquired the Lake Erie & Western, again for a small down-payment and credit from banks controlled by J. P. Morgan & Co. A year later, by use of similar financial techniques, the Van Sweringens gained possession of 64 percent of the stock of the Toledo, St. Louis & Western (Clover Leaf) and proceeded to tie their properties together through the medium of three holding companies, a private concern, the Vaness Company, which in turn controlled stocks of two subsidiaries, the Western and Clover Leaf Companies.

Finding their debts onerous and their holding companies hard to manage, in 1922, the Van Sweringens consolidated their properties into the New York, Chicago & St. Louis Company, acting under the laws of the several states in which the constituent companies operated. However, in order to obtain the full benefits of consolidation, especially to capitalize upon the transaction through the issuance of securities, it was necessary to obtain the authority of the Interstate Commerce Commission. But the Commission had already taken the position that, in the absence of a complete plan, no consolidation under the Act of 1920 could be approved. Rather than make a frontal assault upon this position, the Van Sweringens resorted to a flanking attack: they assumed in their application to the Commission that the consolidation's legality had been established

²⁸ The most comprehensive study of the Van Sweringens and their railroad empire was made by the Senate Committee on Interstate Commerce. See also, for the original Nickel Plate merger, "The Van Sweringen Group," *Railway Age*, May 6, 1922, LXXII, 1047.

²⁹ Fear of antitrust prosecution because of the competition of the Nickel Plate with the New York Central's Lake Shore probably dictated this move by the Central. See Chapter II.

under state law, and merely asked for a certificate to operate the properties, as required by Section 1 (18) of the Act, and for approval under Section 20a to issue additional securities.

This maneuver placed the Commission at an obvious disadvantage. From a transportation standpoint the proposal had much to recommend it, since the properties being combined were complementary and their inclusion in a single system had been suggested both in the Ripley report and the tentative plan. Financially, there was some question raised by minority stockholders about a proposed exchange of non-voting preferred stock of the new corporation for voting preferred stock of the constituent companies, a device which would assure Van Sweringen control of the consolidation; but the point was not pressed. Technically, however, the proposed transaction represented a violation of the law, since no application had been filed under Section 5 of the Transportation Act.

The Commission found the argument of expediency stronger than the language of the Transportation Act. On June 18, 1923, a majority of the Commission held that a consolidation carried out under state law did not require federal approval and argued that it would be unwise to construe the law in such a way as to prevent consolidations which served the public interest to an exceptional degree.³⁰ A strong dissent written by Commissioner Eastman, and concurred in by Commissioners Hall and Esch, declared that Congress had manifested in the Act the intention to give the Commission control of consolidation and that the proposal under consideration was destructive of the Commission's power and of the plan which Congress wished the Commission to develop.³¹

Shortly after this fortunate turn of events, the Van Sweringens disposed of their preferred stock in the new company for \$13,000,000 and paid off a large part of their obligations. Still in control of the Nickel Plate, they purchased a controlling

³⁰ *Operation of Lines and Issue of Capital Stock by the New York, Chicago & St. Louis R. R. Co.*, 79 I. C. C. 581 (1923).

³¹ 79 I. C. C. 581, 587.

interest in the Chesapeake & Ohio from the Huntington estate and in January 1923 received the Commission's sanction to serve as directors of their new acquisitions.³² Within a short while the brothers installed their own board of directors.

The control thus established clearly challenged the validity of the tentative plan, which had made the Nickel Plate and the Chesapeake & Ohio principals in two separate and distinct systems. However, by making their purchases through two holding companies, the Vaness Co. and the Nickel Plate Co., the Van Sweringens avoided for the time being a test before the Commission.

Instead, the brothers laid plans to annex another Pocahontas carrier, the Virginian, a road which also figured in the ambitions of the Norfolk & Western and its parent company, the Pennsylvania. It will be recalled that Ripley had assigned the Virginian to the Norfolk & Western and that the Commission's plan had shifted this road to the Chesapeake & Ohio. Fearing, perhaps, to antagonize the powerful Pennsylvania by making a direct play for the Virginian, the Van Sweringens proposed joint control of this carrier by the Chesapeake & Ohio and the Norfolk & Western. However, this solution proved unacceptable to President Maher of the Norfolk & Western, who feared the arrangement would permit the Chesapeake & Ohio to enter Norfolk, Virginia (terminus of the Norfolk & Western and the Virginian), instead of being confined to Newport News, a smaller port across the James River. Eventually the parties agreed upon an armistice, which stipulated that neither side would take action in regard to the Virginian until January 15, 1924, which happened to be three days after the Commission's hearings on the tentative plan came to an end.

Meanwhile, in another direction the Van Sweringens were making real progress. For some time they had felt the need of an eastern connection for the Nickel Plate (which terminated at Buffalo) in order to bring this system to New York City.

³² *Interlocking Directors—New York, Chicago & St. Louis and Chesapeake & Ohio*, 76 I. C. C. 549 (1923).

Finding Lehigh Valley and Lackawanna stock too scattered and too expensive to suit their purposes,³³ they began to buy into the Erie until, by the end of 1923, enough stock had been acquired to insure control. At about the same time the Chesapeake & Ohio purchased stock control of the Hocking Valley and the Pere Marquette. Thus, shortly after the Commission had ended its hearings on the tentative plan, the Van Sweringens had attained control of a group of roads with more than 9,600 miles of line.

This new railroad empire represented a direct threat to the accomplishment of the systems proposed in the tentative plan for the eastern region.³⁴ From a practical standpoint, it was next to impossible to form a fifth system of any size and strength from the roads not already controlled by the Van Sweringens, the New York Central, the Pennsylvania and the Baltimore & Ohio. The Van Sweringen holdings contravened the proposals made by the Commission for the Pocahontas and Michigan areas, in fact, no two of the Van Sweringen roads appeared in the same system in the tentative plan. However, the Commission did not pass on the legality of the Van Sweringen rail empire until March 1926.

Elsewhere in the East no substantial changes in the pattern of railroad control took place, though there were several sharp contests for control of particular properties. On December 28, 1920, the New York Central applied under Section 5 (2) for authority to acquire two Chicago terminal companies, the Chicago Junction Railway and the Chicago River & Indiana Companies, which had for some time been open to all the trunk lines. The Pennsylvania took the lead in opposing this application and

³³ The Wheeler Report suggests that the decision to buy the Erie instead of the Lehigh Valley may have been prompted by the New York Central's bankers who wanted to hold on to the Lehigh Valley and dispose of the less profitable Erie to friendly interests. *Railroad Combination in the Eastern Region*, pp. 620-625.

³⁴ An excellent description of the Van Sweringen holdings in 1924 is contained in an article, "History of the Van Sweringen System," *Railway Age*, August 30, 1924, LXXVII, 381-384.

sought to enlist the support of other carriers entering Chicago. At the hearings before the Commission, the Pennsylvania, Baltimore & Ohio, Erie, Grand Trunk, Wabash and Chesapeake & Ohio contested the application, but the Van Sweringens, because of their close association with the New York Central and the Central's bankers, refused to be a party to the case. In May 1922, the Commission approved the application of the New York Central, subject to certain conditions which would have required the Central not to discriminate against its competitors in the use of the terminal railroads.³⁵ However, the case was taken to the courts and, in March 1924, the United States Supreme Court handed down a decision which contained two significant holdings: (1) that no carrier could acquire control of another by lease or stock ownership without the Commission's approval, and (2) that orders of the Commission issued under Section 5 (2) were subject to judicial review as to the sufficiency of evidence upon which the orders were based.³⁶ The Supreme Court remanded the case to the lower courts for a new trial, but a compromise agreement subsequently reached by the interested carriers put a stop to further litigation.

At the other end of trunk line territory a bitter fight raged between the New York Central and the Baltimore & Ohio for possession of the Reading and the Central of New Jersey. President Smith of the New York Central, it will be remembered, opposed the assignment of these terminal properties to the Baltimore & Ohio at the hearings on the tentative plan, and argued in favor of an interior route over the main line of the Jersey Central and the northern line of the Reading, connecting with the New York Central's line at Williamsport, Pennsylvania. President Smith won the support of the New York State Chamber of Commerce which testified in favor of his scheme at the

³⁵ *Chicago Junction Case*, 71 I. C. C. 631 (1922).

³⁶ *The Chicago Junction Case*, 264 U. D. 258 (1924). *The Traffic World* pointed out that the Commission was having so much trouble with the New York Central's attempt to acquire the packer railroads in Chicago, it ought to think twice before circumscribing all the roads in the country in a complete plan. *Traffic World*, October 18, 1924, p. 813.

hearings. He also "persuaded" ³⁷ Mr. Oldham, the Boston banker whose original plan had allotted the Reading system to the Baltimore & Ohio, to switch the Jersey Central to the New York Central in a later plan. Throughout this controversy the Pennsylvania displayed a noble impartiality: President Rea suggested to President Willard of the Baltimore & Ohio a route through northern Pennsylvania (including trackage over 130 miles of line owned by the Pennsylvania Railroad) ³⁸ which he claimed was superior to that advanced by President Smith, and at the same time urged President Dice of the Reading to insist upon an independent status for his road. The Pennsylvania did not care to see either of its principal rivals in command of these strategic properties.

In New England the rivalry of the trunk lines did not become an issue during the 1920's, largely because the poverty of the New England carriers made them unattractive to outsiders. Neither the Baltimore & Ohio nor the Pennsylvania wished to be saddled with the New Haven, and so testified at hearings on the tentative plan, ³⁹ and although the New York Central considered strengthening its hand in the affairs of the Boston &

³⁷ From 1924 to 1937, Mr. Oldham received an annual retainer of from \$20,000 to \$25,000 from J. P. Morgan & Co., the Central's bankers. In the latter part of 1920, and for the next several years, he was in close touch with the New York Central management and received several favors from them. Late in 1921, Mr. Oldham revised his railroad plan so as to place the Jersey Central with the New York Central. *Railroad Combination in the Eastern Region*, Part 2, pp. 597-598.

³⁸ This route was pieced together as follows:

New York to Williamsport, Pa. (Jersey City & Reading)	236.8 miles
Williamsport to Falls Creek (Pennsylvania R. R.)	127.2 miles
Falls Creek to Butler, Pa. (Buffalo, Rochester & Pittsburgh) . . .	84.1 miles
Butler to Chicago (Baltimore & Ohio)	464.4 miles

Total	912.5 miles
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Railroad Combination in the Eastern Region, Exhibits C-1199, C-1240 to C-1242, inclusive.

³⁹ See Chapter V.

Maine ⁴⁰ on at least one occasion, in the end it remained satisfied with its control of the Boston & Albany. No incursion into the New England network occurred until 1929, after the peak of prosperity had been reached and the value of New England railroad securities had been considerably enhanced.

In the spring of 1924, the Pennsylvania, New York Central, Baltimore & Ohio and the Van Sweringens agreed to confer together with the aim of obtaining a settlement of outstanding differences between them and an allocation of eastern carriers among the four parties which could be presented to the Commission as an alternative to that part of the tentative plan which dealt with trunk line territory. The initiative for these meetings came from the Van Sweringens, who were anxious to have their holdings approved by the Commission and wanted support of other trunk lines to this end. Since the brothers always kept an eye on the stock market, it was not unlikely that the financial benefits of a consolidation of their properties also exerted influence upon their actions. But the Van Sweringens were not the only parties that stood to gain from a trunk line agreement. President Willard of the Baltimore & Ohio had high hopes of winning the Reading system once and for all, while the New York Central counted heavily on obtaining either the Lehigh Valley or the Lackawanna. No indication of the Pennsylvania's attitude, outside of its insistent demand to keep the Norfolk & Western, was given until later. But it is not unlikely that the Pennsylvania's officers, as well as the other railway executives wished to do everything necessary to avoid the enactment of compulsory consolidation measures which were being bruited around in Administration quarters and incorporated in part in the Cummins Bill.⁴¹

40 President Smith of the New York Central wished to be made a director of the Boston & Maine, but changed his mind after a Central representative talked with Commissioner Eastman. *Railroad Combination in the Eastern Region*, pp. 612-614.

41 President Rea of the Pennsylvania was one of the leading organizers of the executives' fight against compulsory consolidation.

The four-party conference got under way in May 1924, and by July it appeared that an agreement between the participants might actually be reached. At all events the major differences between the Van Sweringens, the New York Central and the Baltimore & Ohio had been settled. The right of the Van Sweringens to roads already under their control had been recognized, as well as their claim to the Virginian. The New York Central consented to give up its demands for the Reading system; in return, it secured from the Baltimore & Ohio trackage over the northern branch of the Reading, thus filling in its proposed interior route, and also received the Buffalo, Rochester & Pittsburgh, which had been allocated to the Van Sweringens in the tentative plan. Together the Baltimore & Ohio and the Van Sweringens conceded the Lehigh Valley to the New York Central. It was also agreed among the parties to hold the New England situation in abeyance pending the settlement of more burning issues. All that remained was to obtain the consent of the Pennsylvania to the compromise arrangement.

President Rea and General Atterbury⁴² had been doing some hard thinking. Their claim to retain the Norfolk & Western had been readily granted by the other parties, and this in itself, from the Pennsylvania's standpoint, was an improvement on the tentative plan. In other respects, however, the Pennsylvania's officers felt their road's interests had not been taken care of. President Rea had always stood for an independent Reading system and did not take kindly to the latter's cession to the Baltimore & Ohio, though he preferred this course to the satisfaction of the New York Central's demands for the terminal properties.⁴³

42 W. W. Atterbury was at that time vice-president of the Pennsylvania in charge of operations.

43 The New York Central was, of course, the Pennsylvania's strongest rival in the East. As between the Central and the Baltimore & Ohio, the Pennsylvania might be expected to prefer the latter. Both the Pennsylvania and the Baltimore & Ohio banked with Kuhn, Loeb & Co.

Nor could the Pennsylvania afford to give up the Virginian to the Van Sweringens without a struggle,⁴⁴ though on this issue the Van Sweringens indicated a willingness to compromise by permitting the Pennsylvania to share in the control of this Pocahontas carrier. But it was the division of the Lehigh Valley and Lackawanna between the New York Central and the Van Sweringens which the Pennsylvania disliked most. Both of these roads were important coal carriers and two of the richest prizes in the eastern region. Moreover, President Rea had his eye on a Buffalo-to-New York line over which the Pennsylvania could divert traffic and avoid congestion at Pittsburgh, and preferred the Lackawanna for this purpose because of its shorter route.⁴⁵ If the New York Central acquired the Lehigh Valley, President Rea had visions of the Central's fashioning a new direct route from New York to Pittsburgh and Chicago, cutting through the heart of the Pennsylvania's most jealously guarded territory.⁴⁶ Though this nightmare was undoubtedly without substance,⁴⁷ the Pennsylvania had its own particular interest in the Lehigh Valley, first, as a short cut across Pennsylvania and New Jersey; second, because of the Lehigh Val-

44 Officers of the Norfolk & Western still wanted to keep the Chesapeake & Ohio out of Norfolk. However, there again President Rea would have compromised in order to keep the New York Central out of this region.

45 The Lackawanna covered the distance from New York to Buffalo in 396 miles, the Lehigh Valley in 448 miles. Later on, however, President Rea switched his interest to the Lehigh Valley.

46 In a memorandum dated June 28, 1924, and circulated among Pennsylvania's directors, President Rea warned: "I fear that we have been diverted largely to the Buffalo gateway in connection with Lehigh Valley and Lackawanna, and have not given enough attention to what I fear the New York Central have in mind in acquiring Lehigh Valley and B. R. & P., which is, in addition to other advantages, to secure a through line between the West and the Atlantic Seaboard passing through Pittsburgh, which they have always desired, and which they threatened to carry out 25 years ago." *Railroad Combination in the Eastern Region*, Exhibit C-1582.

47 Any route the New York Central could piece together would have required securing trackage rights over the Pennsylvania railroad or additional construction in the State of Pennsylvania. The possibility of either event taking place was quite remote.

ley's New York terminals; and, third, because of the latter's strong position in the mining, steel and cement districts of Central Pennsylvania.⁴⁸

On July 25, 1924, the Pennsylvania presented a series of demands which shattered the prevailing harmony of the four-party talks. President Rea stood firm for an independent Reading System and recognition of the Pennsylvania's interests in the Virginian and asked, in addition, for a half-interest in the Lackawanna and trackage rights over the Nickel Plate along the south shore of Lake Erie. This last request was made to gain a direct east-west connection linking up ports on Lake Erie which the Pennsylvania served with a series of north-south lines. But the other parties would not yield to the Pennsylvania's demands. President Willard of the Baltimore & Ohio refused to waive his claim to the entire Reading system, and, while some acceptable arrangement might have been worked out in the case of the Virginian, the Van Sweringens and the New York Central refused to allow the Pennsylvania to participate in the affairs of the Lehigh Valley or Lackawanna,⁴⁹ or to concede track-

48 At a hearing before the Interstate Commerce Commission in 1930, W. W. Atterbury, then president of the Pennsylvania, described the reasons for the interest of his road in the Lehigh Valley. "Our line from Buffalo to New York is rather circuitous, and we were not in a position to compete successfully with the other lines running out of Buffalo, and the Lehigh Valley gave me a line from our line at Sunbury-Catawissa into New York, where the Lehigh Valley terminals and ours are adjacent. Also by the construction or reconstruction of one of our lines just north of Harrisburg and a small additional new construction we could couple up with the Lizard Creek line of the Lehigh Valley and in that way get an entrance into the tremendous steel and cement district of Central Pennsylvania, a situation that we do not cover directly at the present time." *Interstate Commerce Commission v. Pennsylvania Railroad Company and the Pennsylvania Company*, Docket 22260, pp. 399-400.

49 Mr. O. P. Van Sweringen stated he would not give the Pennsylvania a half-interest in the Lackawanna because "the people who control the property would not agree to it, and only agreed to its allocation to the Nickel Plate because of the acquiescence of the New York Central to accept the Lehigh Valley in place of the Reading-Jersey Central." The people who controlled the property were, of course, the Morgan-Baker-Vanderbilt interests. *Railroad Combination in the Eastern Region*, pp. 1108-1109.

age rights along the south shore of Lake Erie. The conferences became deadlocked and remained that way throughout subsequent meetings.

On October 11, 1924, the New York Central, Baltimore & Ohio, and the Van Sweringens presented the plan agreed to between them to the Interstate Commerce Commission. This plan allocated the Lehigh Valley and most of the Buffalo, Rochester & Pittsburgh to the New York Central; the Norfolk & Western, Alton and Grand Trunk Western to the Pennsylvania; the Reading, Western Maryland, Monon, Ann Arbor and Cincinnati, Indianapolis & Western to the Baltimore & Ohio; and the Lackawanna, Virginian and Bessemer & Lake Erie to the Van Sweringens, in addition to the roads already under their control.⁵⁰ At the meeting with the Commission, President Rea attacked the four-party plan, disputed the disposition made of the Lehigh Valley, Reading and Virginian, and attempted to refute the contention of the other carriers that the plan effected a rough equality of size and earning power among the trunk lines.⁵¹ No progress towards a compromise between the Pennsylvania and the other parties was made either at this session or at another meeting with the Commission which took place on January 26, 1925. Although the four parties continued their talks during 1925, a solution of the differences between them remained elusive, and negotiations were discontinued in September 1925.

The failure of the first four-party conferences and the Commission's request in February 1925 that Congress amend the law so as to eliminate the requirement that a complete plan

50 "Four Great Eastern Systems Proposed to I. C. C.," *Railway Age*, October 18, 1924, LXXVII, 683-684.

51 In a statement to the press, President Rea devoted two-thirds of his criticism of the plan of the other trunk lines to an attack on the assignment of the Lehigh Valley. He pointed to the large interchange between the Pennsylvania and Lehigh Valley, the close relations between the two roads in the New York area, and argued that the attachment of the Lehigh Valley to any other system would disrupt long-standing channels of trade. "Pennsylvania Objects to Four-System Plan for East," *Railway Age*, October 25, 1924, LXXVII, 807-809.

be adopted, signaled the breakdown of law and order in trunk line territory. From that time on, so long as business activity and railroad revenues remained at high levels, the eastern combination situation was marked by a hectic struggle for control of strategic properties which recalled the boisterous days of Gould, Harriman and Hill. Generally speaking, each of the trunk line executives was concerned primarily with fortifying the position of his own system—and in the case of the Van Sweringens with stock market manipulations—but in practice the New York Central, Baltimore & Ohio and Van Sweringens found it advantageous to work together in a coalition commonly referred to as the “Big Three,” while the Pennsylvania waged the struggle either alone or in more or less clandestine association with lesser railroad promoters. The contest for control among the trunk lines did not officially terminate until 1932, though the outcome was foreshadowed much earlier.

The eastern carriers moved first to strengthen positions already won but somewhat precariously held. Undoubtedly the most precarious system—if it could be called that—was the chain of roads strung together by the Van Sweringens, and consisting of the Nickel Plate, Chesapeake & Ohio, Erie, Hocking Valley and Pere Marquette. To save their control of these roads, the Van Sweringens pressed for a decision on the application to unify the properties which had been before the Commission since 1924. However, on March 2, 1926, the Commission voted 7-to-1 not to authorize the unification, holding that the financial legerdemain of the Van Sweringens, who repeated the practice of converting voting preferred stock of the constituent companies into non-voting preferred stock in the unification, violated the public interest.⁵² Four of the eight commissioners who voted on the application doubted that unified operation of the properties would benefit transportation, and noted that the proposal was not consonant with the tentative plan of consolidation for the eastern region. The other four

⁵² *Nickel Plate Unification*, 105 I. C. C. 425 (1926).

commissioners disagreed, contending that the combination of carriers before them for review had distinct operating advantages despite the inconsistency with the tentative plan. This plan, they argued, could not be regarded as an inflexible guide to the pattern of railroad development.

Each time the Commission set the Van Sweringens down, they bounced back stronger than ever. In its decision on the Nickel Plate unification the Commission had observed that the Chesapeake & Ohio was the more logical backbone of the projected system. Accordingly, the Van Sweringens built 60 miles of double track line between the Chesapeake & Ohio at Waverly, Ohio, and the Hocking Valley at Columbus, and then obtained permission from the Commission to combine the Chesapeake & Ohio, the Hocking Valley and the newly-constructed link.⁵³ Next, the Van Sweringens solidified control of their possessions by making additional purchases of Chesapeake & Ohio, Pere Marquette and Erie stock with funds borrowed from J. P. Morgan & Company. On February 11, 1927, the Chesapeake & Ohio applied to the Commission for authority to acquire the Pere Marquette and the Erie, but no decision on this application was forthcoming until 1928. In the meantime the Van Sweringens launched the Chesapeake Corporation, a giant holding company which took over most of the railroad stock held by the brothers and their dummy corporations. By selling stocks and bonds of the new company, this time to the public, the Van Sweringens secured enough funds to pay off a major share of their banking debts.⁵⁴

⁵³ See 124 I. C. C. 195.

⁵⁴ The Chesapeake Corporation issued \$48,000,000 in bonds to enable the Vaness Company to pay J. P. Morgan & Co. \$15,000,000, part of a debt of \$35,000,000. Ferdinand Pecora, counsel for the Senate Banking and Currency Committee, questioned O. P. Van Sweringen on this point:

"So that the parent, the Vaness Co., this mother and father of the Chesapeake Corporation, took care of its little child by transferring to it part of the indebtedness which the parent owed to J. P. Morgan & Co.? Doesn't it work out that way?"

The witness admitted that it did. Hearings on Stock Exchange Practices before the Senate Committee on Banking and Currency (73d Cong., 1st Sess.), 1933, Part I, p. 694.

Although they were more firmly established than the Van Sweringens, the other trunk lines also took steps to preempt roads which they considered essential to their systems. Even before the adjournment of the first series of four-party conferences the management of the Pennsylvania had decided to recommend to the stockholders an increase of \$100,000,000 in the company's authorized indebtedness, and this increase was voted April 30, 1925. However, the stockholders were not informed that the purpose was to acquire stocks of other carriers, but only that the additional amount was needed to provide for the company's capital requirements and a progressive development of the property. Of this sum, more than \$22,000,000 were spent in perfecting control of the Norfolk & Western, and by March 1, 1928, the Pennsylvania had added 146,300 shares of Norfolk & Western common to its holdings, increasing its ownership to more than 43 percent of its subsidiary's outstanding stock.⁵⁵ Late in 1925, the Baltimore & Ohio concluded a lease of the Cincinnati, Indianapolis & Western, which had been allocated to it both in the tentative plan and in the four-system plan agreed to with the New York Central and the Van Sweringens. This lease, which had sound operating advantages behind it, received the Commission's approval on March 10, 1926.⁵⁶ At about the same time the New York Central began to add to its holdings of Lehigh Valley stock, and by common agreement the Central and the Baltimore & Ohio decided to increase their ownership of Reading stock.

Because they had agreed on a four-system plan for the eastern region, the New York Central, Baltimore & Ohio and Van Sweringens frequently found it desirable to work together in a kind of "triple alliance." In January 1927, they undertook jointly to purchase the Rockefeller holdings of Wheeling & Lake Erie and Western Maryland stock at prices of \$21,300,-

⁵⁵ It will be recalled that the tentative plan recommended separating the Pennsylvania and the Norfolk & Western.

⁵⁶ *Control of Cincinnati, Indianapolis & Western R. R. Co. by Baltimore & Ohio R. R. Co.*, 11 I. C. C. 124 (1926).

ooo and \$18,820,000, respectively.⁵⁷ In line with their compact, the Wheeling & Lake Erie stock was divided equally among the three roads and the Western Maryland holdings went to the Baltimore & Ohio. From 1925 on through 1929, efforts of one member of the "Big Three" to assume control of a property under the agreements were generally supported by the other members, and the trio frequently united to oppose efforts by the Pennsylvania and outside interests to obstruct the accomplishment of the four-party plan.

The "Big Three" lived constantly in the fear that their plans for the eastern region might be upset by the predatory activities of several fifth-system promoters, the most significant of whom was President L. F. Loree of the Delaware & Hudson. While the New York Central and the Pennsylvania were arguing over allocation of the Lehigh Valley, the Delaware & Hudson quietly purchased 25 percent of the stock of the disputed property, enough to make the acquisition of the Lehigh Valley by the New York Central, as agreed to by the Baltimore & Ohio and the Van Sweringens, next to impossible. In April 1925, President Loree presented a plan to the Commission which contemplated the formation of five systems in the eastern region, the fifth system to be based upon the Delaware & Hudson. After allowing for the properties already controlled by the Pennsylvania, the New York Central, the Baltimore & Ohio and Van Sweringens, the fifth system took over all remaining carriers of any importance in trunk line territory.⁵⁸ In July 1926, President Loree applied to the Commission for approval

⁵⁷ A fear of possible outside interference may have prompted these acquisitions. The Wheeling and the Western Maryland had formed part of the Gould transcontinental system before the war, and at least one promoter, Mr. Frank Taplin of the Pittsburgh & West Virginia, was known to be interested in the road.

⁵⁸ The Loree plan proposed the inclusion of the following major carriers: Delaware & Hudson, Lackawanna, Lehigh Valley, Wabash, Western Maryland, Wheeling, Bessemer & Lake Erie, Pittsburgh & West Virginia, Buffalo, Rochester & Pittsburgh. New England was left independent, and the Reading system was placed under the joint ownership of the five systems.

of a 999-year lease of the Buffalo, Rochester & Pittsburgh which had been negotiated by the Delaware & Hudson the previous year. Curiously, there was no connection between the applicant's lines and those of the Buffalo, Rochester & Pittsburgh, but Mr. Loree intended to remedy this deficiency by constructing a road across the northern part of Pennsylvania along the route of the old "Harriman line."

Mr. W. H. Williams, who served as vice-president of the Delaware & Hudson under Mr. Loree in addition to his duties as Chairman of the boards of the Wabash and Missouri Pacific, worked closely with Mr. Loree in the latter's early fifth system plans. Later on, Mr. Williams chose to play a lone hand. In November 1925, the Wabash received authority from the Commission to acquire control of the Ann Arbor,⁵⁹ and presently began to buy stock in the Lehigh Valley with the view of supplementing the Delaware & Hudson's holdings. All told, the Loree-Williams combination held approximately 44 percent of the Lehigh Valley's total capital stock outstanding at the beginning of 1927, and Mr. Loree was prepared to assume control of this important carrier.

A third fifth-system aspirant appeared in the person of Mr. Frank Taplin, proprietor of the Pittsburgh & West Virginia. This strategic coal carrier ran from Pittsburgh west to a junction with the Wheeling & Lake Erie and had formed part of the ill-fated Gould system in the early years of the twentieth century.⁶⁰ Though Mr. Taplin headed a syndicate which owned a number of mines served by the Pittsburgh & West Virginia, there were indications that he viewed his possession of the road in a speculative light. In 1926 he offered the Pittsburgh & West Virginia first to the New York Central and later to the Pennsylvania, but at a price neither was likely to pay. Then early in 1927, Mr. Taplin began to buy Wheeling & Lake Erie. Since

⁵⁹ *Control of the Ann Arbor R. R. Co. by Wabash Ry Co.*, 105 I. C. C. 43 (1925).

⁶⁰ In the Gould system this road had been the Pittsburgh-Wabash Terminal Company, but had changed its name during reorganization.

these stock purchases followed closely those made by the Van Sweringens in pursuance of their agreement with the Baltimore & Ohio and New York Central, the price of Wheeling common shot up from \$30 to \$130 a share within the space of a few weeks, and a corner developed. The shorts, suddenly realizing that the buyers were playing for keeps, grew frantic and were saved only by special dispensation of the Van Sweringens and J. P. Morgan & Company.⁶¹ When at last the smoke blew away, the "Big Three" emerged in firm control of the Wheeling & Lake Erie, and Mr. Taplin emerged an indignant minority stockholder, a role he proceeded to play with telling effect. Immediately he had himself and two associates elected to the Wheeling's board and together with Williams of the Wabash, intervened in opposition to the application of "Big Three" nominees to serve as directors of the Wheeling.⁶² However, no decision on the directorship battle was handed down until May 1928. By that time Mr. Taplin had got in two additional blows. On April 6, 1927, the Pittsburgh & West Virginia sought the Commission's permission to build a 40-mile line from Pittsburgh to connect with the line of the Western Maryland at Connellsville, Pennsylvania. This application was approved⁶³ despite opposition of the Pennsylvania, Nickel Plate, Baltimore & Ohio and Wheeling & Lake Erie, and construction was

⁶¹ By agreement, the Van Sweringens turned over 5,000 shares of common stock to Morgan & Company, which they could dispose of against purchases of equal amounts of 6-percent preferred at a difference in price of not less than 5 points in favor of the Big Three. *Railroad Combination in the Eastern Region*, p. 1986. This episode recalled the former fight between Harriman and Hill for Northern Pacific stock at the turn of the century. Here also J. P. Morgan & Co. stepped in. See T. W. Van Metre, "Wild Buying of Railroad Shares as Rumors Fly Is Like Old Days," *New York Evening Post*, February 19, 1927.

⁶² The nominees of the Big Three all held directorships in other roads. Under paragraph (12) of Section 20a of the Transportation Act, the Commission must approve the appointment of a person wishing to serve as director of more than one road.

⁶³ *Proposed Construction of Extension by Pittsburgh & West Virginia Ry. Co.*, 138 I. C. C. 755 (1928).

started soon afterwards. On August 13, 1927, the Pittsburgh & West Virginia boldly applied for authority to acquire control of the Wheeling & Lake Erie.⁶⁴ This series of aggressive moves stamped Mr. Taplin as a person to be reckoned with in trunk line territory.

The Pennsylvania had at first watched the maneuvers of Messrs. Loree, Williams and Taplin with misgivings. Loree in particular was regarded by the Pennsylvania's officers as something of a "pirate" in railroad affairs⁶⁵ and his proposed northern route through Pennsylvania annoyed them, though they were able to block it with the aid of Kuhn, Loeb & Company with whom the Delaware & Hudson banked.⁶⁶ The Pennsylvania also discounted Mr. Taplin as a rank speculator, and joined members of the "Big Three" in opposing that gentleman's ambitions in the Pittsburgh area. Gradually, however, the Pennsylvania began to recognize the usefulness of fifth-system promoters. Not only did their machinations serve to disconcert the Pennsylvania's rivals, and obstruct the accomplishment of their plans, but the successful formation of a fifth system by one of these promoters would torpedo the four-system agreement and leave the Pennsylvania supreme in trunk line territory. Moreover, the Pennsylvania's management perceived other tangible advantages which might accrue from cooperation with fifth-system plans.

General Atterbury, who succeeded Samuel Rea as president of the Pennsylvania in 1925, first approached President Loree. The latter had himself once served as an officer of the Pennsylvania and was even more bitterly opposed to the four-system

64 No hearings on this application were held until June 1930.

65 The word "pirate" was applied to Mr. Loree in a Pennsylvania-inspired article which appeared in several important papers. "Pennsylvania Railroad Demands New Merger Deal—Sees Parley Near," *New York Times*, August 21, 1927. See also P. H. Fulton, "Loree—Stormy Petrel of the Railroad World," *Magazine of Wall Street*, March 15, 1928, XLI, 936-938.

66 The Pennsylvania Railroad was, of course, Kuhn-Loeb's best railroad customer.

plan than the Pennsylvania. More to the point, the Delaware & Hudson's attempt to lease the Buffalo, Rochester & Pittsburgh seemed foredoomed to failure because of the lack of physical connection between the properties,⁶⁷ a deficiency which General Atterbury was prepared to supply—at a price! A meeting was held early in 1927 in the office of Mr. Otto Kahn, of Kuhn, Loeb & Company and attended by General Atterbury, President Loree, President Williams of the Wabash and Mr. Kahn himself. As a result of this conference the Delaware & Hudson received trackage rights over the Pennsylvania between Buttonwood and Dubois, Pennsylvania, where connection was made with the Buffalo, Rochester & Pittsburgh, an arrangement which could be terminated by either party upon three years' notice. In return, Mr. Loree entered into a second agreement with the Pennsylvania which covered the following points:⁶⁸

1. The Pennsylvania and the Delaware & Hudson would agree to invest \$50,000,000 in Wabash stock.
2. Subject to Commission approval, the Delaware & Hudson would exchange its own stock for Pennsylvania holdings of Wabash stock.
3. If this could not be accomplished, the Delaware & Hudson would take over all the Wabash stock, and the Pennsylvania would acquire the Delaware & Hudson's holdings of Lehigh Valley stock.
4. If President Loree's fifth system were approved by the Commission, the Pennsylvania would turn in Lehigh Valley stock in exchange for stock in the new system.
5. If none of these plans materialized, the Pennsylvania would obtain the Lehigh Valley stock and the Delaware & Hudson would keep the Wabash stock.

⁶⁷ The New York Central and Baltimore & Ohio, intervening in opposition to the application, emphasized the lack of physical connection between the properties, and this point was also made in an examiner's report recommending denial of the application.

⁶⁸ *Interstate Commerce Commission v. Pennsylvania Railroad Company and Pennsylvania Company*, Docket 22260, Exhibit 1, pp. 4-5.

Fundamentally, the transaction amounted to this: If the Commission approved a fifth system, the Pennsylvania would have a large interest in it; if, as seemed more likely, the Commission failed to authorize a fifth system, the Pennsylvania gained a substantial interest in the Lehigh Valley, which it disputed with the New York Central.

Subsequent events proved that the Pennsylvania had played a shrewd game. On December 13, 1927, the Interstate Commerce Commission rejected the Delaware & Hudson's application to acquire control of the Buffalo, Rochester & Pittsburgh,⁶⁹ pointing out that the trackage rights granted by the Pennsylvania, and subject to cancellation upon three years' notice, lacked the permanence compatible with the 999-year lease for which approval was sought. This decision was a severe blow to Loree, in whose fifth system the "B, R & P" formed a vital link. But that resourceful gentleman had another string in his bow, namely, the stock in the Lehigh Valley held by himself and Williams which amounted to 44 percent of that road's total shares. The chances were excellent that he could establish himself in control of the Lehigh Valley and remain a power in eastern railroad affairs. Accordingly, Mr. Loree made a determined effort to round up the few extra shares of stock which would guarantee his control of the road and enable him to upset the existing management. President Loree felt so sure of himself that he divulged his plans to President Loomis of the Lehigh Valley and through him to the Morgan-Baker forces who controlled the road. However, these people were in no mood to give in without a battle. In the ensuing contest, both groups scoured the financial countryside for proxies in preparation for the board of directors' meeting, scheduled for January 17, 1928, and the management of the Lehigh Valley scanned the Pennsylvania statutes, where they found a provision that enabled them to disqualify any stock transferred within 60 days of the

⁶⁹ *Control of Buffalo, Rochester & Pittsburgh Ry by Delaware & Hudson Co.*, 133 I. C. C. 750 (1927). See also "I. C. C. Hits Blow at Loree Merger," *New York World*, February 26, 1928.

meeting. On the fateful day, the Loree-Williams combination managed to qualify proxies representing 499,317 shares of stock, but the Morgan-Baker forces amassed proxies for 516,354 shares. President Loree had lost by the narrow margin of 17,307 out of more than 1,000,000 votes! Faced with the collapse of his fifth-system plans and pressed by Otto Kahn to carry out his written agreement with General Atterbury, President Loree sold his Lehigh Valley and Wabash holdings to the Pennsylvania for the sum of \$62,500,000. Additional purchases of stock in May and June placed the Pennsylvania squarely in control of both carriers.

Late in October 1927, at the invitation of General Atterbury, executives of the trunk lines resumed the conferences broken off two years earlier. President Loree, also present by invitation, outlined his fifth-system plans, but failed to make any headway. No mention was made by either Loree or the General of the agreement between them. Turning again to a four-system solution for the East, the executives discussed the disposition of four key roads—the Virginian, Reading, Lehigh Valley, and Lackawanna. As in previous talks, the parties managed to compromise their differences in regard to the first two roads by dividing the Virginian between the Pennsylvania and the Van Sweringens and approving control of the Reading by the Baltimore & Ohio, but were unable to devise an acceptable plan for allocation of the Lehigh Valley and Lackawanna. General Atterbury came forward with a proposal for joint control of the Lackawanna by the Pennsylvania and the Van Sweringens and suggested that the New York Central and Loree share control of the Lehigh Valley. But this suggestion, as might be expected, proved unacceptable to the “Big Three” and the conferences appeared doomed to failure.

However, within a short time, a series of events occurred which radically altered the trunk line situation. In December the Commission had denied the Delaware & Hudson’s application to lease the “B, R & P,” and a month later Loree had failed in his raid on the Lehigh Valley. With chances of a four-

system agreement brighter, the executives asked Mr. Loree to admit defeat and sell out. But that gentleman had already committed himself to the Pennsylvania, and in April General Atterbury was in possession of Loree's Wabash and Lehigh Valley holdings. The General now proposed to the other parties sole control of the Lehigh Valley by the Pennsylvania, with trackage over this carrier granted to the Van Sweringens, and suggested furthermore that the Nickel Plate be "pooled" between the Van Sweringens and the Pennsylvania, thus satisfying the latter's desire for trackage along the south shore of Lake Erie. To this suggestion President Crowley of the New York Central and the Van Sweringens objected vigorously. President Willard pointed out that the Wabash, allocated to the Baltimore & Ohio in the four-system plan, was now in the Pennsylvania's hands, and wished to be compensated for this loss with the Alton, the Lehigh & New England and the Lehigh & Hudson. Again the conferences approached a breakdown. Nor did matters improve when the executives met with members of the Commission in May and June of 1928. Embittered at the failure of the conferences, Mr. O. P. Van Sweringen remarked to the Commissioners "that General Atterbury was there with a basket to get as many roads thrown in as possible, while he was there with five broken up propositions which he was trying to unify and coordinate."⁷⁰ He said he could not work out his financial or other plans and was "through" with the conferences. For his part, General Atterbury publicly placed the blame of failure on the other parties. Privately he was more charitable: in reviewing the split among the trunk lines in a memorandum written in 1930,⁷¹ he stated that the Baltimore & Ohio, the New York Central, and the Van Sweringens were each so playing their own selfish games that, in effect, it formed a coalition against the Pennsylvania. General Atterbury continued:

⁷⁰ *Railroad Combination in the Eastern Region*, pp. 2054-2055.

⁷¹ *Ibid.*, Exhibit C-3716.

I have no criticism of either Mr. Willard or Mr. Crowley. They were each trying to protect their respective properties and stockholders. Nor have I any criticism of the Messrs. Van Sweringen, who were in the game to make money for themselves. But it was essential for me to see that the interests of the stockholders of the Pennsylvania Railroad and of the public that the Pennsylvania serves, were properly safeguarded.

The breakdown of the inter-carrier talks was followed by a new period of anarchy in the eastern region. Fortified by high revenues and infected with the general stock market fever, the trunk lines indulged in a reckless scramble for control. The Van Sweringens had shown how to consolidate profits with the formation of the Chesapeake Corporation in 1927, which permitted the brothers, by selling securities to the public, to reduce their debts by more than \$50,000,000. But the Van Sweringens were still running afoul of the Commission in efforts to unify the roads under their control. In May 1928, the Commission approved the acquisition of the Pere Marquette by the Chesapeake & Ohio, principally because the Pere Marquette provided the Pocahontas carrier with an outlet for its coal, but held that control of the Erie by the Chesapeake & Ohio would disrupt existing channels of trade and prejudice the general plan for the formation of competitive systems in eastern territory.⁷² To the Van Sweringens, however, half a loaf was better than none. They disposed of a large part of their Erie stock and utilized the proceeds to purchase control of the Buffalo, Rochester & Pittsburgh after Loree's unsuccessful attempt to lease this road. Following the epic contest with the Taplin forces, they acquired the Wheeling & Lake Erie, holding these roads for the "Big Three." Next, the Nickel Plate sold its Pere Marquette stock to the Chesapeake Corporation for a profit exceeding 100 percent, an exchange which led Commissioner Eastman to remark:⁷³

⁷² *Proposed Control of Erie R. R. Co. and Pere Marquette Ry. Co. by Chesapeake & Ohio Ry. Co.*, 138 I. C. C. 517 (1928).

⁷³ *Proposed Control of Erie R. R. Co. and Pere Marquette Ry. Co. by Chesapeake & Ohio Ry. Co.*, 150 I. C. C. 751, 761 (1929).

We pass upon these various applications for authority to acquire control which are brought to us by the Nickel Plate or the Chesapeake & Ohio, but apart from causing some passing comfort or discomfort to the Van Sweringens I cannot see that our decisions affect the ultimate situation very materially. The process of acquiring control goes steadily on regardless and the very same may be said of the process of keeping control.

If the Van Sweringens felt any "passing discomfort," it came from the fact that their holdings, although constantly appreciating in value, were being administered through seven different companies and had left them with banking debts of more than \$65,000,000. Consolidated operations might have to await a more favorable attitude on the part of the Commission, but consolidation of securities was possible, and, as the Van Sweringens saw it, productive of more immediate benefits. In January 1929, the brothers chartered the Alleghany Corporation in the State of Maryland, and the marketing of Alleghany securities to the public via J. P. Morgan & Company netted them some \$83,000,000. Next the Alleghany Corporation proceeded to buy stocks held by the brothers' dummy corporations at fancy prices, and this transfer of funds enabled the Van Sweringens to pay off debts amounting to \$35,000,000.⁷⁴ At the conclusion of these transactions more than \$52,-

⁷⁴In June 1929, the Chesapeake Corporation increased its capital stock by 900,000 shares. One-half of this stock went to the stockholders at \$50 a share; the other half was distributed as a stock dividend. Testifying before the Senate Banking and Currency Committee in 1933, Mr. O. P. Van Sweringen admitted that the Alleghany Corporation was the largest stockholder, in fact, owned more than 70 percent of the stock of the Chesapeake Corporation. Counsel for the Senate Committee questioned him further:

"Q. So that if this stock dividend and the right to subscribe to shares at \$50 a share was in the nature of a lemon—of a melon. [Laughter in the room.]

"A. Very good.

"Q. It was a melon and became a lemon—was in the nature of a lemon—the greater part of it went to the Vaness Corporation?

"A. Yes, and still is. It still pays its dividends and earns it.

"Q. Now, at the time of the issuance of these 450,000 shares, the increased

000,000 still remained in Alleghany's treasury for future conquests.

This time the Van Sweringens blazed a trail into the West. Slowly and steadily Alleghany began to buy Missouri Pacific stock, until by March 1929 a controlling interest of more than 20 percent of all Missouri Pacific shares outstanding was owned by the Van Sweringens. In discussing this venture before the Senate Banking and Currency Committee in 1933,⁷⁵ Mr. O. P. Van Sweringen observed that control of the Missouri Pacific added considerably to the traffic diversity of their system, since nearly one-half of the revenues of the brothers' eastern roads depended on coal. In addition, the acquisition of the Missouri Pacific provided eastbound traffic which could profitably be handled by the Nickel Plate. But regardless of the soundness of the operating reasons behind it, the move was expensive and ultimately cost the Alleghany Corporation nearly \$88,000,000. On their western swing, the brothers also purchased 20 percent of the stock of the Kansas City Southern and smaller interests in several other carriers.

Cooperating with the other members of the "Big Three" in the East, the Van Sweringens exchanged their shares in the Buffalo, Rochester & Pittsburgh for the Wheeling & Lake Erie stock held by the Baltimore & Ohio. Shortly afterwards the Baltimore & Ohio added another road south of the Lakes, the Buffalo & Susquehanna, to its holdings, and applied to the Commission for authority to lease both carriers. Urged on by one of the Baltimore & Ohio's directors to indulge in aggressive buy-

or additional stock of the Chesapeake Corporation to its stockholders at \$50 a share, do you know what the market value was of these shares?

"A. I haven't it here.

"Q. Well, I understand it was about \$85 a share?

"A. That is all right. Thank you."

Hearings before the Senate Committee on Banking and Currency (73d Cong., 1st Sess.), 1933, p. 698.

⁷⁵ Hearings before the Senate Committee on Banking and Currency (73d Cong., 1st Sess.), 1933, Part 2, pp. 567-568.

ing of railroad properties,⁷⁶ President Willard began to increase the Baltimore & Ohio's holdings of Reading stock. The New York Central also sold its stock in the Wheeling & Lake Erie to the Van Sweringens, then disposed of its Lehigh Valley shares, which had been rendered useless so far as control was concerned by the sale of Loree's holdings to the Pennsylvania. With the proceeds the New York Central purchased Lackawanna stock to protect its control of this strategic carrier.

The Pennsylvania's management, having scored an initial victory over its opponents by taking President Loree into camp, was determined to keep its advantage in the struggle for control. Shortly after the creation of the Alleghany Corporation by the Van Sweringens the Pennsylvania directors launched a giant holding company of their own, the Pennroad Corporation, with the avowed purpose, as Otto Kahn put it, "to go and buy strategically important pieces of railroad before somebody else snatched it away from them."⁷⁷ With some \$91,000,000 in its coffers as a result of selling its securities in the open market, Pennroad promptly invested \$30,000,000 in stocks of the New Haven and Boston & Maine, enough to obtain control of these roads and marking the only invasion of New England by a trunk line during the twenty years of the Transportation Act. Pennroad also paid Henry Ford the handsome price of \$35,000,000 for the Detroit, Toledo & Ironton, which under the terms of the four-party plan had been allocated to the Baltimore & Ohio.

⁷⁶ Mr. Bernard Baruch, a Baltimore & Ohio director, wired President Willard: "Suggest following competitive bidding aggressively if necessary to prevent absorption of possible control by others." In September 1929, the Baltimore & Ohio was buying Reading at \$126 per share. *Railroad Combination in the Eastern Region*, pp. 2077-2078.

⁷⁷ Otto Kahn, whose banking house, Kuhn, Loeb & Co., helped start Pennroad, so stated the purpose of the holding company at a hearing before the Senate Banking and Currency Committee (73d Cong., 1st Sess.), 1933, pp. 1005-1006.

To the south, Mr. Taplin who had succeeded President Loree as the stormy petrel among the eastern railroads,⁷⁸ was busy with construction of the Connellsville extension and with other projects equally obnoxious to the "Big Three". In February 1929, the Pittsburgh & West Virginia applied to the Commission for authority to control the Wheeling & Lake Erie and the Western Maryland, thus forming a fifth system stretching from the Lakes to tidewater. In May of 1929 the battle between Mr. Taplin and the Van Sweringens over the Wheeling & Lake Erie reached a new intensity when the Taplin forces on the Wheeling's board, refusing to adjourn, held a "rump meeting," and might have established a dual control of the Wheeling if the Van Sweringens had not obtained a timely court order. But Taplin was not yet done. He had located a large bloc of Wheeling stock and needed only \$2,000,000 in cash for a substantial down-payment. In this extremity Mr. Taplin discovered a friend: none other than General Atterbury of the Pennsylvania. Suddenly taking a sympathetic interest in the affairs of the Pittsburgh & West Virginia, the General arranged to have Pennroad step in with a loan of the necessary funds. But this was only a preliminary to the main event, for a few months later Mr. Taplin sold his entire interest in the Pittsburgh & West Virginia to the Pennsylvania for the juicy sum of \$37,910,000. Like President Loree, Mr. Taplin could afford to bow gracefully out of the eastern trunk line situation. And General Atterbury had reason to be satisfied, for the money which went to the purchase of Mr. Taplin's holdings had been raised by the public sale of Pennroad stock, and the Pennsylvania Railroad was definitely out in front in the contest for control among the eastern carriers.⁷⁹

In the meantime, the Commission was trying desperately to keep the lid on the trunk line situation. The Commission's fund-

⁷⁸ See C. W. Foss, "New Complications in Railroad Consolidation—Toplin (!)* Succeeds Strategic Position Vacated by Loree," *Boston Evening Transcript*, June 27, 1928.

⁷⁹ See T. W. Van Metre, "Pennsy Fights to Top in War of Rail Giants," *New York Evening Post*, May 11, 1929.

amental policy was to preserve the balance of power among the trunk lines until an agreement among them could be worked out or until Congress acted to relieve the railroad tangle. This policy manifested itself first in the decision handed down in October 1926, wherein the Commission denied the application of the Norfolk & Western to lease the Virginian.⁸⁰ The Chesapeake & Ohio had intervened in opposition to the proposed lease, and the Commission's decision served to maintain the status quo in the Pocahontas district. Early in 1927, the Commission refused to authorize a lease of the Lehigh & New England by the Reading, partly because it found the rental excessive, but largely because the Pennsylvania had opposed placing the road under Reading control, which was tantamount to control by the New York Central and the Baltimore & Ohio.⁸¹ Said the Commission of the Lehigh & New England:

Its final disposition is a matter that can well be postponed, in view of its strategic importance, until we have before us fuller and better information in regard to the larger plans that may be proposed for the consolidation of the eastern railroads.

Hope for a trunk line settlement may also have figured in the Commission's rejection of the Delaware & Hudson's application to lease the Buffalo, Rochester & Pittsburgh in December 1927.⁸² The decision stressed the fragile character of the track-age rights secured by Loree, but the antagonism of the New York Central and Baltimore & Ohio to the lease undoubtedly exercised strong influence upon the Commission's judgment in the matter.

However, the failure of the second series of four-party conferences and the eruption of civil war in trunk line territory

⁸⁰ *Proposed Acquisition of Control of Virginian Ry by Norfolk & Western Ry. Co.*, 117 I. C. C. 67 (1926).

⁸¹ *Proposed Lease of Lehigh & New England by Reading Co.*, 124 I. C. C. 81 (1927).

⁸² *Control of Buffalo, Rochester & Pittsburgh Ry. by Delaware & Hudson Co.*, 131 I. C. C. 750 (1927).

forced the Commission to play a more vigorous role. The Commission was powerless to compel the railroad executives to carry out consolidations, or even to bring in a mutually satisfactory plan of consolidation, and its power did not extend to holding companies which the Van Sweringens and the Pennsylvania were using liberally to effectuate control, but it could refuse to grant immunity from the antitrust laws to a carrier which brought about a combination in contravention of public policy. Commissioner Eastman, who had on numerous occasions differed with the consolidation policies of the majority of his colleagues, suggested in his dissent on the application of the Chesapeake & Ohio to acquire control of the Erie and Pere Marquette⁸³ that the common control of these three carriers by the Van Sweringens should be considered in a Clayton Act proceeding.⁸⁴ Though the recommendation was not followed out in this particular case, the Commission did invoke Section 7 of the Clayton Act to break up the control of the Wheeling & Lake Erie by the New York Central, Baltimore & Ohio and Van Sweringens after a finding that the Wheeling competed with the Central and Baltimore & Ohio.⁸⁵ However, since it had already been decided among the three parties that the Van Sweringens, whose Nickel Plate did not offer "substantial" competition to the Wheeling, would assume the entire interest in the Wheeling, this action by the Commission did not cause any special hardship to the "Big Three". In the summer of 1929, the Wheeling & Lake Erie was placed in the hands of a receiver chosen with

83 *Proposed Control of Erie R. R. Co. and Pere Marquette Co. by Chesapeake & Ohio Ry. Co.*, 138 I. C. C. 517, 545.

84 Section 7 of the Clayton Act prohibited combinations which substantially lessened competition.

85 *Interlocking Directors of Wheeling & Lake Erie and Trunk Lines*, 138 I. C. C. 643 (1928), and *Interstate Commerce Commission v. Baltimore & Ohio R. R. Co.*, 152 I. C. C. 721 (1929).

the Commission's approval.⁸⁶ At the instigation of the assiduous Mr. Taplin, hearings had been initiated in May 1928 on the control of the Western Maryland by the Baltimore & Ohio, and in January 1930 the Commission handed down a decision which found the control illegal and ordered the defendant to dispose of its stock in the Western Maryland.⁸⁷ But a few years later the Commission permitted the Baltimore & Ohio to deposit its Western Maryland stock with a trustee.⁸⁸

Without question, the most important proceeding before the Commission involving the Clayton Act was the prosecution of the Pennsylvania Railroad for its control of the Lehigh Valley and the Wabash. Suit against the Pennsylvania was instituted in May 1929, and hearings were held a year later. The Pennsylvania's lawyers conducted a strong defense of the acquisition basing their case on two propositions: (1) Control by the Pennsylvania Company, a non-carrier holding company, was not control by the Pennsylvania Railroad; (2) The Lehigh Valley and Wabash stock had been acquired "solely for investment" and the acquisitions, therefore were legal under the Clayton Act.⁸⁹ These arguments made little headway with the Commission, which, in a decision handed down in December 1930, ordered the defendant to divest itself of its Lehigh Valley and Wabash stock.⁹⁰ However, the Pennsylvania proved more obdurate than other roads prosecuted for antitrust violations. By

⁸⁶ *Interstate Commerce Commission v. Baltimore & Ohio R. R. Co.*, 156 I. C. C. 607 (1929).

⁸⁷ *Interstate Commerce Commission v. Baltimore & Ohio R. R. Co.*, 160 I. C. C. 785 (1930).

⁸⁸ *Interstate Commerce Commission v. Baltimore & Ohio R. R. Co.*, 183 I. C. C. 165 (1932).

⁸⁹ Section 7 of the Clayton Act excepted "corporations purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition."

⁹⁰ *Interstate Commerce Commission v. Pennsylvania Railroad Co.*, 169 I. C. C. 618 (1930).

appealing to the federal courts, it was able to secure a reversal of the Commission's decision,⁹¹ and in the end retained control, at least in a modified form, of the disputed properties.

SOUTHERN REGION

In contrast with the hectic shuffling of railroad properties and the large-scale combinations effected in the East under the Transportation Act, acquisitions in the South were infrequent and of minor consequence. In terms of the number of carriers, diversity of size and strength of systems, and intensity of competition, the South could not, of course, expect to match the area north of the Ohio and east of the Mississippi. Furthermore, perhaps because of the general weakness of its railroads, consolidation had already proceeded further in the South than in any other part of the country. By 1920 relatively few independent lines were left in the South, and those that could have been, or under the tentative plan were intended to be, taken over by major systems were usually so weak that they failed to attract buyers. Ignoring the fight for control of Pocahontas carriers, in which the trunk lines were the chief contenders, the southern combination front, except for a few brief flare-ups, remained generally inactive throughout the 1920's.

One sharp clash of interest, however, took place in connection with the Carolina, Clinchfield & Ohio, a strategic road connecting the Carolinas with the coal fields of eastern Kentucky and southern Virginia. The controversial status of this road had been acknowledged in the tentative plan where it had been proposed to include the Clinchfield either in System No. 11, Atlantic Coast Line-Louisville & Nashville, or in System No. 12, Illinois Central-Seaboard. In 1923 the Coast Line, in conjunction with its associate, the Louisville & Nashville, applied for authority to lease the Clinchfield, arguing that this control would accomplish the following: (1) Open up additional coal

⁹¹ *Pennsylvania R. R. Co. v. Interstate Commerce Commission*, 66 F. (2d) 37 (C. C. A. 3, 1933), sustained by United States Supreme Court in *Interstate Commerce Commission v. Pennsylvania R. R. Co.*, 291 U. S. 631 (1934).

fields in Kentucky to the Carolinas; (2) increase competition between the Southern Railway and the Louisville & Nashville after the completion of a line from the latter's Harlan County branch to the Clinchfield's line at Manchester, Virginia; (3) assist in returning coal cars to the "L & N". At the hearings the Seaboard intervened and asked the Commission to deny the application on the grounds that, since the Seaboard received most of its coal from the Clinchfield, effectuation of the proposed lease would make it dependent upon its competitors for fuel. The Commission's decision, announced June 3, 1924,⁹² offered the parties a compromise: it found that the acquisition would serve the public interest for the reasons given by applicants, but made its approval subject to these conditions: (1) The Clinchfield was to be maintained as a distinct corporate organization; (2) the connection with the Louisville & Nashville had to be completed; (3) existing traffic channels had to be preserved; (4) the Clinchfield was to be kept as an open route equally available to all carriers. After some discussion, officials of the Coast Line and Louisville & Nashville accepted the conditions enunciated by the Commission, and the lease was carried out as specified.

The Atlanta, Birmingham & Coast⁹³ was another road which attracted the attention of a number of systems serving the Southeast. Although it was still in receivership, largely because of insufficient traffic received from connections, the "A, B & C" formed a choice route across Georgia for roads serving Birmingham and Atlanta, and had been recommended by Ripley as a bridge between the Atlantic Coast Line in eastern Georgia and the Louisville & Nashville in northern Alabama. In the summer of 1924, the 640 miles of the "A, B & C" were inspected by Frisco officials, and rumors flew that the Frisco would attach this road as a coastal connection to its Birmingham-

⁹² *Clinchfield Railway Lease*, 90 I. C. C. 113 (1929). This road was discussed at some length by Ripley in his report and was the subject of dispute at hearings on the tentative plan.

⁹³ This road's name was changed from Atlanta, Birmingham & Atlantic following reorganization in 1926 (117 I. C. C. 181).

ham division.⁹⁴ Later in the year the Seaboard was reported to be eyeing the "A, B & C" acquisitively.⁹⁵ However, Ripley's assignment of the road, which had been followed in the tentative plan, eventually was carried out. In February 1926, the Coast Line announced that it was planning to buy the Atlanta, Birmingham & Coast and stockholders made a rush to unload their shares. In May, a federal court approved the reorganization plan of the Atlanta, Birmingham & Coast and purchase by the Coast Line,⁹⁶ and in October the Commission's assent to the acquisition was obtained.⁹⁷

Gains made by other southern carriers were slight. The Illinois Central and the Seaboard, both of which had rebelled against the tentative plan's proposal that they be merged, picked up several independent carriers, the first in the Gulf area and the second in Florida, none of them of great significance. In 1925, the Illinois Central received authority to acquire the Gulf & Ship Island,⁹⁸ a line of 308 miles which supplemented the Illinois Central's holdings in the Gulf area and had been included in that system in the tentative plan. A year later the Yazoo & Mississippi Valley, an Illinois Central subsidiary, took over the Alabama & Vicksburg and the Vicksburg, Shreveport & Pacific,⁹⁹ which together operated 329 miles of line in the region of the lower Mississippi. From 1925 to 1927, the Seaboard assimilated a number of small roads in Florida and negotiated a 99-year lease of the Georgia, Florida & Alabama which received the Commission's approval in 1928.¹⁰⁰ The Gulf,

⁹⁴ *New York Times*, June 30, 1924.

⁹⁵ *Ibid.*, October 24, 1924.

⁹⁶ Minority stockholders had objected to sale of the "A, B & C" to the Atlantic Coast Line and had taken the matter to court.

⁹⁷ *Reorganization and Control of Atlanta, Birmingham & Atlantic Ry. Co.*, 117 I. C. C. 161 (1926).

⁹⁸ *Control of Gulf & Ship Island Railroad Co.*, 199 I. C. C. 169 (1925).

⁹⁹ *Control of Alabama & Vicksburg Ry. and Vicksburg, Shreveport & Pacific Ry.*, 111 I. C. C. 161 (1926).

¹⁰⁰ *Acquisition of Control by Seaboard Air Line*, 131 I. C. C. 733 (1928).

Mobile & Northern spread out gradually from Mobile, Alabama, acquiring the Jackson & Eastern, the Birmingham & Northwestern and the New Orleans Great Northern and increasing its mileage operated from 433 miles in 1922 to 962 in 1933.¹⁰¹ The only activity of the Frisco in the Southwest was the acquisition, late in 1925, of the Muscle Shoals, Birmingham & Pensacola, a Class II railroad operating 159 miles of line in eastern Alabama and Florida.¹⁰²

The Southern, whose system had been adjudged sufficient unto itself in the tentative plan, pursued a highly cautious policy in combination affairs, failing to intervene in the Clinchfield acquisition and ignoring gains made by the Coast Line and Seaboard at other points in the Southeast. In August 1929, there was some stir caused when the Commission requested the Southern to show cause why an order should not be entered requiring that carrier to divert itself of securities of the Mobile & Ohio and of the New Orleans & Northeastern. The latter had been controlled by the Southern since early in the century, but the Mobile & Ohio came under Southern domination in 1928 when stock trust certificates held by the Southern were exchanged for a controlling stock interest in the Mobile road, without authorization by the Commission and allegedly in violation of Section 7 of the Clayton Act.¹⁰³ Although the Southern's control of the New Orleans & Northeastern was not prosecuted, the case in regard to the Mobile & Ohio was pressed towards adjudication, and in 1929 the Southern disposed of its stock in the latter road to the Gulf, Mobile & Northern, whose competition the Southern had less reason to fear than that of some of the larger southeastern carriers.

¹⁰¹ Interstate Commerce Commission, *Statistics of Steam Railways in U. S.*, 1922, 1933.

¹⁰² *Acquisition and Operation of Line by Muscle Shoals, Birmingham & Pensacola R. R. Co.*, 105 I. C. C. 99 (1925).

¹⁰³ *New York Times*, August 13, 1929.

WESTERN REGION

Combination activity in the West during the first ten years of the Transportation Act was marked by the following developments: (1) A large number of Southwestern carriers were acquired by other systems, some of these acquisitions following and some violating the lines of the tentative plan; (2) Several important transcontinentals, including the Santa Fe, Union Pacific, Great Northern and Northern Pacific, pursued conservative policies with respect to extension of control over other roads; (3) New construction and acquisitions altered the orientation of lines in the Northern California-Oregon area; (4) The Hill lines fought dismemberment and finally asked the Commission to authorize unification; (5) Control of the Central Pacific was retained by the Southern Pacific.¹⁰⁴

The Southwest was easily the most active theatre of railroad combination west of the Mississippi from 1920 to 1930. The discovery of new natural resources and the presence of a number of weak roads competing among themselves and against several strong transcontinentals, gave impetus to system building and acquisition of control. In this process there were involved three distinct sets of carriers: first, the three large Southwest systems, the Missouri Pacific, Frisco and Rock Island; second, the two transcontinentals, the Santa Fe and Southern Pacific; and lastly, several smaller systems, including the St. Louis Southwestern, the Kansas City Southern and the Missouri-Kansas-Texas.

One of the most noteworthy events in the post-war era was the rapid comeback of the Missouri Pacific system. By the end of 1924 the Missouri Pacific had repossessed the St. Louis, Iron Mountain & Southern, the International-Great Northern and the Texas & Pacific, all of which had been reorganized at various times after the collapse of the Gould system in 1915.

¹⁰⁴ An interesting account of the development of western railroad systems both before and after the Act of 1920 may be found in Stuart Daggett, *Railroad Consolidation West of the Mississippi River*, University of California Press, Berkeley, California (1933).

The International-Great Northern nearly slipped into hostile hands in 1922, when the Frisco contracted to purchase the common stock of the bankrupt road at \$27.75 a share and applied to the Commission for approval of this arrangement. However, the Missouri Pacific, intervening at hearings on the Frisco's application, called attention to the long-standing relations and large interchange between the International-Great Northern and the Missouri Pacific, and prevailed upon the Commission to upset the Frisco's plan for achieving control.¹⁰⁵ A year later, the Commission authorized the New Orleans, Texas & Mexico (Gulf Coast Lines) to take up the International's stock at \$31 a share.¹⁰⁶ It so happened that the Missouri Pacific itself had on file an application to acquire the Gulf Coast Lines, and this acquisition, which accorded with the tentative plan, was approved in December 1924,¹⁰⁷ despite opposition from the State of Texas. As a result of the deal a juicy melon was cut by inside interests, including a large dividend declared on Gulf Coast Lines stock, the payment of \$2,000,000 to bankers, and generous brokers' fees which the Commission condemned as excessive.¹⁰⁸

So far the Missouri Pacific's growth had been in conformity with the tentative plan. The further carrying out of this plan would have involved the extension of the Missouri Pacific railroad, as well as the Frisco, to Chicago. However, the "Mop" evidently felt more inclined to stretch out toward the West, for in 1924 it purchased from the Western Pacific a half-interest in the newly-reorganized Denver & Rio Grande West-

¹⁰⁵ *Control of International-Great Northern by St. Louis-San Francisco*, 79 I. C. C. 435 (1923). The Missouri Pacific also pointed out at hearings that the International-Missouri Pacific route was 139 miles shorter from St. Louis to San Antonio, and 202 miles shorter from St. Louis to Houston, than the International-Frisco route.

¹⁰⁶ *Control of International-Great Northern R. R. by New Orleans, Texas & Mexico Ry.*, 90 I. C. C. 262 (1924).

¹⁰⁷ *Control of Gulf Coast Lines by Missouri Pacific R. R.*, 94 I. C. C. 161 (1924).

¹⁰⁸ *New York Times*, December 11, 1925.

ern. A majority of the Commission displayed no hesitancy in scuttling the tentative plan so far as it pertained to the Missouri Pacific, and found the latter's control of the Denver & Rio Grande Western in the public interest,¹⁰⁹ noting the former association of these carriers and certain advantages which allegedly resulted from common control. Besides, stated the majority opinion, the arrangement could easily be changed at some later date if it were found desirable to do so. To these arguments Commissioner Eastman took vigorous exception. It was his idea that the Denver & Rio Grande Western would benefit less from common control by the Western Pacific and Missouri Pacific than these roads would benefit from the control effected, since the Denver & Rio Grande Western enjoyed a greater monopoly of traffic in its territory than its proposed co-owners did in theirs.¹¹⁰ Mr. Eastman also assailed the position that this control, once it had been approved, could be uprooted at the will of the Commission, and the Denver & Rio Grande Western placed elsewhere in the complete plan the Commission was required to prepare. Once the assignment had been made, said Mr. Eastman:¹¹¹

We can then deliberate upon the evidence of the consolidation hearings with all the wisdom we possess, and assign the Denver & Rio Grande Western property to such place in the consolidation plan as our judgment dictates, but it will be wholly idle effort. The destinies of the Denver & Rio Grande property will lie with the Western Pacific and Missouri Pacific, and nowhere else.

¹⁰⁹ *Acquisition by Missouri Pacific of D. & R. G. W. Common Stock*, 90 I. C. C. 161 (1924).

¹¹⁰ Commissioner Eastman's opinion asserted in part: "As I see it, the Missouri Pacific and the Western Pacific, particularly the former, need the Denver & Rio Grande more sorely than it needs them, and both the reorganization and the control herein authorized have been shaped primarily for their benefit." *Ibid.*, p. 171.

¹¹¹ *Denver & Rio Grande Western Reorganization*, 82 I. C. C. 745, 765.

With the acquisition of the Denver & Rio Grande Western, the Missouri Pacific's period of rapid expansion came to a close. It took over no other road of importance under the Transportation Act, with the possible exception of the San Antonio, Uvalde & Gulf, a line of 316 miles operating between Uvalde, San Antonio, and Corpus Christi, Texas, acquired in 1925.¹¹² But the Missouri Pacific had reason to be satisfied with its early conquests: the mileage of this sprawling and never too strong system had more than doubled within the space of five years.¹¹³

By contrast, two other southwestern systems, the Frisco and the Rock Island, made little or no progress under the Transportation Act and ended by renewing their previous close association. The Rock Island tried in 1925 to annex the St. Louis Southwestern, and stock in hand asked the Commission to permit it to control this small but strategic carrier. For some unknown reason, at the hearing the Frisco appeared to oppose the Rock Island's application and, on October 6, 1925, the Commission decided against the proposed control. The Frisco, after losing the International-Great Northern to the Missouri Pacific in 1923, contented itself with picking up several smaller properties in Missouri and Alabama,¹¹⁴ but showed no inclination to become the imposing Chicago-to-Gulf system sketched in the tentative plan. In the early part of 1926 the Frisco purchased 15 percent of the Rock Island's stock and in April of that year the Commission approved the seating of several Frisco officials on the Rock Island's board. The Frisco's interest in the latter road was reciprocated in 1931, when the Rock Island purchased a large bloc of Frisco stock, thus tying the

112 *Control of San Antonio, Uvalde & Gulf Ry. Co.*, 105 I. C. C. 35 (1925).

113 The Missouri Pacific operated 6,906 miles in 1920 and controlled nearly 15,500 miles at the end of 1925. Including the full 2,604 miles of the Denver & Rio Grande, some 8,533 miles were taken over from 1920 through 1925.

114 These acquisitions were the Kansas City, Clinton & Springfield and Kansas City, Ft. Scott & Memphis, 94 I. C. C. 5 (1924); and, as previously mentioned, the Muscle Shoals, Birmingham & Pensacola, 105 I. C. C. 99 (1926).

two roads together much as they had been under the Moore-Reid regime, which antedated World War I.

Railroad combination in the Southwest, as in the East, was highlighted by the activities of promoters anxious to cash in on mergers and rumors of mergers. The reorganization and renaissance of the Missouri Pacific system had been featured by coups carried off by inside groups, including Chairman W. H. Williams and Kuhn, Loeb & Co., the road's bankers. But in the Southwest, as in the East, some of the most daring promotional schemes were those of the marauding Mr. Loree, who, in addition to his other accomplishments, headed the Board of Directors of the Kansas City Southern. A week after the Commission rejected the Rock Island's application to control the St. Louis Southwestern, Mr. Loree purchased the Rock Island's holdings in the Cotton Belt, and a short time afterwards added a bloc of shares in a third southwestern carrier, the Missouri-Kansas-Texas. Curiously, Mr. Loree's highly touted "Southwestern Merger" was based on the Kansas City Southern, which operated approximately one-half as much mileage as the Cotton Belt and a third as much as the Katy, and Loree's investments in stocks of the three roads which sufficed for control amounted to 2 percent of the total securities of the combination. These matters did not escape the attention of the Commission when the Southwestern Merger was placed before it for approval. Nor did Mr. Loree help his cause by remarking, after the American Short Line Association intervened in opposition to the proposed merger, that there were "some 30,000 miles of short line in the country which ought to be scrapped."¹¹⁵ In any event, members of the Commission seemed no more favorably disposed towards Loree's western than his eastern projects, and denied the application of the Kansas City Southern to control the Cotton Belt and Katy on May 19, 1927.¹¹⁶ The Commission

¹¹⁵ Hearings on S. 4892 before the Senate Committee on Interstate Commerce (69th Cong., 2d Sess.), 1927, pp. 187-188.

¹¹⁶ *Unification of Southwestern Lines*, 124 I. C. C. 401 (1927).

pointed out the incongruity of creating a system based upon a line with 15 percent of the total mileage, and controlled by such a slight fraction of the total assets, and thought, too, that the merger would permit the Kansas City Southern to discriminate against the other two lines with respect to competitive traffic. But Mr. Loree could not so easily be put aside. Despite the rejection of his combination, the prices of stocks of the roads he controlled continued to soar. After a new burst of publicity, conferences with President Coolidge and members of the Commission, Loree came back with a southwestern merger project which this time made the Katy the stem of the proposed system. However, the Commission was equally determined that Mr. Loree should not pass. In March 1928, a charge of violation of Section 7 of the Clayton Act was brought against the Kansas City Southern, and Loree eventually capitulated by selling his Cotton Belt and Katy holdings to the bankers with the handsome pecuniary profit which such forced sales usually brought to him.¹¹⁷

Of the two transcontinentals operating in the Southwest, the Southern Pacific was easily the most active in effecting combinations during the 1920's. The Santa Fe contented itself chiefly with taking over roads in which it already held substantial interests or lines which had been built by construction companies which the railroad had financed. In 1926, however, the Santa Fe made news by purchasing the Kansas City, Mexico & Orient and its subsidiary, the Kansas City, Mexico & Orient of Texas. These roads, operating 739 miles of line between Wichita, Kansas, and Alpine, Texas, had not earned their fixed charges for a number of years. Their incorporation into the Santa Fe system accorded with the intentions of the Transportation Act in regard to the union of weak and strong roads, and readily won the Commission's approval, despite the fact that these properties had been allocated to the

¹¹⁷ Loree made a net profit of \$20,000,000 on his sale of Lehigh Valley and Wabash stock to the Pennsylvania in April 1928.

Missouri Pacific in the tentative plan.¹¹⁸ The Southern Pacific made steady and impressive gains in the Southwest, some of its more important acquisitions being: (1) the El Paso & Southwestern, a system of 1,140 miles extending from southeastern Arizona through El Paso to northwestern New Mexico, leased in 1924;¹¹⁹ (2) the San Antonio & Aransas Pass, a line of 729 miles connecting Waco and Houston with San Antonio and Brownsville, Texas, acquired in 1925;¹²⁰ (3) the Texas Midland, a 125-mile road in East Texas, leased by the Southern Pacific in 1928.¹²¹

At the other end of its system, the Southern Pacific also made rapid progress, its most notable success being the retention of control of the Central Pacific. It will be recalled that suit had been instituted under the antitrust laws to compel the Southern Pacific to give up its stock in the Central Pacific, and that a decision to this effect was obtained in the federal courts early in 1922.¹²² However, since the Transportation Act had been passed in the meantime, the Southern Pacific took its case to the Commission and, applying under Section 5 of the Act, asked for authority to acquire control of the Central Pacific. This application was stubbornly contested at hearings held in 1922 by the Union Pacific, which relied on the Central Pacific at its direct connection between Ogden, Utah, and San Francisco. The Union Pacific's argument centered on the following points:¹²³

118 *Control of Kansas City, Mexico & Orient Ry. Co. by Atchison, Topeka & Santa Fe Ry. Co.*, 145 I. C. C. 350 (1928); *Control of Kansas City, Mexico & Orient Ry. Co. of Texas by Atchison, Topeka & Santa Fe Ry. Co.*, 154 I. C. C. 769 (1929).

119 *Control of El Paso & Southwestern System and Securities Issue by Southern Pacific*, 90 I. C. C. 732 (1924).

120 *Control of San Antonio & Arkansas Pass Railway by Southern Pacific Co. and Galveston, Harrisburg & San Antonio Ry. Co.*, 94 I. C. C. 701 (1925).

121 *Acquisition of Control by Southern Pacific Company et al.*, 138 I. C. C. 205 (1928).

122 259 U. S. 2 (1922). See Chapter II.

123 *Control of Central Pacific by Southern Pacific*, 76 I. C. C. 508, 514.

1. In the Pacific Railway Acts of 1862 and 1864, Congress had stated its intention to make the Union Pacific-Central Pacific route one continuous railroad line.
2. The Southern Pacific tended to favor its southern route which gave it a longer haul, with resulting detriment to the Ogden line.
3. Although separated from the Central Pacific, the Southern Pacific would still remain a strong system capable of maintaining itself independently.

But there were equally strong reasons given by the Southern Pacific and by numerous state commissions and private associations for preserving the existing status of the disputed property, reasons which the Commission summarized in the following language: ¹²⁴

The applicant emphasizes the long-continued relationship between the two properties and the resultant interdependent character of the transportation service afforded. It is represented that independent operation would result in the creation of approximately 20 new junction points, that division terminals, shops and other facilities would be dislocated, and that necessary duplication of facilities would involve large expenditures. Testimony was offered indicating that independent operation would impair the efficiency of the service now offered by both companies and would lead to the disruption of established freight and passenger train service, thus destroying existing routes and channels of trade. Increases in operating expenses; and the substitution of two and three line hauls for one-line hauls, in respect to a substantial volume of traffic, were cited as a reason for the conclusion that a separation of the two systems would bring about a material increase in transportation charges.

With but one dissenting voice, the Commission approved the Southern Pacific's application, but in doing so it attached conditions to the effect that (1) continuous train service be maintained between Omaha and San Francisco and between Omaha and other points served by the Southern Pacific, (2) no dis-

¹²⁴ *Ibid.*, p. 12.

crimination in rates or service be made against the Union Pacific, and (3) the Union Pacific and Southern Pacific cooperate in routing via Ogden a maximum of freight originating and terminating within a specified zone.¹²⁵ The decision, therefore, represented a strategic compromise which preserved the long-standing association of the Central Pacific and Southern Pacific, yet protected the central route through Ogden upon which the Union Pacific leaned heavily for through business. This solution of a difficult problem established a pattern for a subsequent agreement concluded by the Southern Pacific and Western Pacific covering rates, routing, trackage rights and other problems arising out of the competition of the two systems in the California area.¹²⁶

Following its acquisition of the Central Pacific, the Southern Pacific undertook a large developmental program in northern California and southern Oregon which involved both construction and purchase of rail facilities. The Southern Pacific extended its line from Eugene to Oakridge, Oregon, on to Kirk, junction point of the Oregon Trunk and the line of the Southern Pacific which passed over Klamath Falls. At a later date the Southern Pacific acquired the Oregon, California & Eastern and the Nevada-California-Oregon, bridging a gap between its Klamath Falls line and the line of the Central Pacific at Wendel, California.¹²⁷ In 1928, the Southern Pacific purchased from the Santa Fe the latter's stock in the Northwestern Pacific which skirted the California coast for 515 miles north of San Francisco.¹²⁸

These moves by the Southern Pacific were in part defensive and designed to offset the invasion of Oregon and northern

125 Order entered February 6, 1923, 76 I. C. C. 529.

126 Agreement reached January 16, 1923, 76 I. C. C. 528.

127 *Construction of Railroad Lines in Eastern Oregon; Public Service Commission of Oregon v. Central Pacific Ry. Co. et al.*, 111 I. C. C. 3.

128 *Control of Northwestern Pacific R. R. Co. by Southern Pacific Co.*, 150 I. C. C. 119 (1928).

California by the Great Northern. The manner in which the Great Northern reached California was peculiar: it came to Bend, Oregon, by way of Wishram, Washington, as the result of trackage agreements entered into with the Spokane, Portland & Seattle, the Oregon Trunk and the Des Chutes Railway; next, purchase of a logging road and additional construction brought the Great Northern down to Chemult, Oregon; from this point the Great Northern secured trackage rights over the Southern Pacific to Klamath Falls; finally, the Great Northern constructed a 90-mile line from Klamath Falls south to Bieber, California, where it met a line built by the Western Pacific from Kiddie, some 110 miles further south.¹²⁹ This patchwork route permitted the Great Northern to make connections with the Western Pacific and improve its working relations with the latter road. This cooperation was also assisted by the fact that Mr. Arthur C. James, an important stockholder in the Hill lines, held a controlling interest in the Western Pacific.¹³⁰

In the Northwest, controversy continued to rage over the proposed dismemberment of the Hill lines and the question as to which carrier, the Great Northern or Northern Pacific, should shoulder the burden of the Chicago, Milwaukee & St. Paul. The incidence of that burden became all the more important after 1925, when the Milwaukee was declared bankrupt. Among the reasons for the receivership established by the Commission in its investigation of the affairs of the Milwaukee was the payment of unreasonably high prices for the acquisition of two properties, the Chicago, Terre Haute & Southeastern and the Chicago, Milwaukee & Gary.¹³¹

¹²⁹ For chart and description of the Great Northern and Western Pacific extensions in California, see Daggett, *op. cit.*, pp. 185-187.

¹³⁰ *Regulation of Stock Ownership in Railroads*, House Report No. 2789 (71st Cong., 3d Sess.), 1931, p. 482.

¹³¹ *Investigation of the Chicago, Milwaukee & St. Paul Railway Co.*, 131 I. C. C. 615 (1928), at pp. 653-663. These roads provided the Milwaukee with Indiana coal and a means of avoiding Chicago congestion, and their acquisition conformed to outlines of the tentative plan.

It will be recalled that at hearings on the tentative plan, the Northern Pacific, Great Northern and Burlington bitterly contested the proposal to dismember the Hill properties.¹³² In the early part of 1927, the managements of these three western roads, assisted by J. P. Morgan & Co., prepared a plan for the unification of their properties, and those of their subsidiaries, into the Great Northern Pacific Railway Company. Besides the Great Northern, the Northern Pacific and the Burlington, the roads involved in the merger plan included the Spokane, Portland & Seattle, the Colorado & Southern, the Ft. Worth & Denver City and the Trinity & Brazos Valley. This proposal envisaged unification of a railroad system extending from the Pacific Northwest to the Midwest and from the Rocky Mountains to the Gulf, with substantial interests, through its board of directors, in the Western Pacific and the Denver & Rio Grande Western.¹³³

When the northwest roads presented their plan of unification to the Commission in July 1927, they argued that the following benefits would follow its acceptance: ¹³⁴

1. Approximately \$10,143,000 in annual operating expenses could be saved as a result of the unification of the Great Northern and Northern Pacific.
2. The traditional community of interest existed between the northern roads, and between them and the Burlington, would be preserved.
3. Unification would improve the credit of these companies.
4. A well-balanced system could be achieved with relatively little sacrifice of competition, since most of the Northern Pacific's mileage was in the western part of its system, while the preponderance of the Great Northern's mileage lay in the eastern end of its system.

¹³² See Chapter V.

¹³³ A good description of the plan is given by Ralph Budd, then president of the Great Northern, in the *Railway Age*, February 26, 1927, LXXXII, 585-589.

¹³⁴ *Great Northern Pacific Ry. Co. Acquisition*, 162 I. C. C. 37 (1930), at pp. 47-56.

At the hearings, the Chicago, Milwaukee & St. Paul took the lead in opposing the plan, claiming that the size and resources of the Great Northern Pacific Railway Company would stifle the Milwaukee, and would reduce railroad competition and employment in the Northwest. Another intervenor, the Minneapolis & St. Louis, argued that approval of the application by the Commission would cause it to lose traffic to the Burlington at points where the two roads were in competition. A number of state commissions and local trade associations also opposed the unification.

The decision of the Commission, held up until February 1930, two months after publication of the complete plan, found the proposed unification in the public interest but, as a condition to approval, required the Great Northern and Northern Pacific to divest themselves of control of the Burlington. A majority of the Commissioners thought that the loss of competition would not prove significant, and pointed out that 96 percent of the stations on the lines of the two northern roads were non-competitive. However, it was admitted that many large centers of industry and population were included in the other four percent. The Commission accepted the argument of the applicants that the Milwaukee could stand on its own feet, and dismissed the plea of the Minneapolis & St. Louis.

Commissioner McManamy dissented sharply from the views of the majority, asserting that the unification undermined competition, violated the announced policies of Congress and the courts with respect to combination, and prejudiced the interests of employees of the northern roads. It was his opinion, furthermore, that the divorce of the Burlington from the Hill lines represented such a major change in the pattern of railroad control that the record did not adequately reflect public attitude towards this situation. In a separate dissent, Commissioner Eastman asked the majority one question: Who was going to put up the \$341,000,000 required to purchase the Burlington? He thought it not unlikely that if a purchaser for the road were found, it would prove to be a holding company devised by friendly interests.

THE FIGHT TO AMEND THE TRANSPORTATION ACT

Despite the request of the Commission, contained in its letter of February 6, 1925, to be relieved of the duty of adopting a formal consolidation plan, and despite the outspoken objections of carriers and other groups to such a plan, efforts were continued by government leaders to compel the railroads to carry out a large-scale and planned program of consolidation. Railroad executives, short line representatives, railway security owners and shippers had opposed the compulsory features of the bill first introduced by Senator Cummins late in 1924. Nevertheless, the Iowa Republican did not give up hope of carrying his point. On March 19, 1925, shortly before the adjournment of Congress, Senator Cummins conferred with President Coolidge and predicted that legislation providing for railroad consolidation would be one of the major issues before Congress when that body reconvened in December. This view received confirmation when, in August, President Coolidge stated that he intended to make consolidation one of the basic policies of his administration.¹³⁵ He hoped, he said, that voluntary action by the carriers would make drastic legislation unnecessary, but if legislation was required to obtain economical transportation for farmers and other shippers and proper returns to investors in railway securities, he would not hesitate to recommend it. In September, President Coolidge conferred with Senator James Watson of Indiana, Republican Senate leader who had been named Chairman of the Senate Interstate Commerce Committee. At this conference, it was agreed that Senator Watson should take charge of the Cummins bill, which provided that the railroads be given from 5 to 7 years to combine voluntarily, after which consolidation became compulsory.¹³⁶

But opposition to any form of compulsion, either immediate or remote, was crystallizing. On October 23, the directors of the Association of Railway Executives adopted a resolution

¹³⁵ *New York Times*, August 5, 1925, p. 1.

¹³⁶ *New York Times*, September 3, 1925, p. 1.

calling upon Congress to provide for "a permissive, as contradistinguished from a compulsory, system of consolidation" and for federal machinery to facilitate the carrying out of consolidations approved by the Commission.¹³⁷ The executives also proposed that at the expiration of a given term of years, the Commission report to Congress the progress of consolidation and make recommendations for further legislative action. In November 1925, members of the Interstate Commerce Commission conferred with President Coolidge and expressed to him their opposition to the use of coercion and to publication of a formal plan of consolidation.¹³⁸ The Railway Business Association and the Investment Bankers of America added their voices to the chorus of protests against compulsory consolidation. Professor Ripley wrote an article attacking the Cummins Bill and urging instead consolidation by slow stages.¹³⁹ On Capitol Hill, Senators Reed and Pepper of Pennsylvania¹⁴⁰ were prepared to lead the fight against the Cummins bill if it managed to reach the floor of the Upper Chamber.

In his speech at the opening of Congress in December 1925, President Coolidge carefully sidestepped the issue of compulsion. After commenting favorably on railroad prosperity and improvements in rail service, the President urged effectuation of a "system of consolidations" and suggested some minor additions to the power of the Interstate Commerce Commission.¹⁴¹ Nevertheless, Senator Cummins took occasion to hail the President's message and promptly introduced a bill which

137 Hearings before the Senate Committee on Interstate Commerce on S. 1870 (69th Cong., 1st Sess.), p. 177.

138 *New York Times*, November 29, 1925.

139 *World's Work*, April 2, 1926.

140 Since the Pennsylvania Railroad led the executives' fight against compulsion, it is not surprising to find the Pennsylvania Senators in the forefront of the opposition to the Cummins bill.

141 President Coolidge recommended that Congress authorize consolidations under the supervision of the Commission, "with power to approve or disapprove when proposed parts are excluded or new parts added."

went even further in compelling consolidation than his original proposal. This bill ¹⁴² gave the railroads three years in which to combine on a voluntary basis. If at the end of this period the Commission felt that integration had not proceeded far enough, it was to adopt a complete plan, and roads within each unfinished system of the plan would be treated in respect to earnings exactly as if they were in fact consolidated. That is to say, all earnings of roads within a given system in excess of 6 percent on property value (as determined by the Commission) would be redistributed to lines in that system earning less than 5 percent. This bill clearly intended to force the railroads to carry out consolidation with a minimum of delay.

At the Senate hearings, the Cummins Bill was opposed by the Interstate Commerce Commission, the railway executives, the short lines and the National Industrial Traffic League. Testifying for a majority of his colleagues, Commissioner Eastman urged repeal of the requirement of a formal plan of consolidation. Mr. Eastman stated the Commission's conclusion as follows: ¹⁴³

Our judgment is that the country ought not to be rushed headlong into any gigantic plan of consolidation which may later prove to be ill-conceived and based upon mistaken premises but that it ought instead to proceed cautiously without any undue anticipation of possible beneficial results, and allowing experience to guide.

The Commissioner observed that many acquisitions of control passed upon by the Commission achieved results as permanent and final as would have been accomplished through technical consolidation, and thought it would save expense and prevent undesirable intercarrier relations, if complete consolidation was available to the railroads without reference to any predetermined plan. All such action, however, would be subject to review by the Commission. Presenting the minority opinion,

142 S. 1870 (69th Cong., 1st Sess.).

143 Hearings on S. 1870, p. 50.

Commissioner Hall agreed that the requirement of a complete plan should be dropped, but argued strongly against any governmental control of combinations and particularly against those provisions of the law calling for preservation of competition and maintenance of existing routes and channels of trade.¹⁴⁴ The resolution adopted by the Association of Railway Executives was read into the record by Colonel A. P. Thom, general counsel for the railroad officers, and A. H. Harris, vice-president of the New York Central, supplemented Mr. Thom's testimony with an attack on the idea of bringing about a limited number of systems by force.

Consolidation must be voluntary, and until the Government is prepared either to purchase the roads or provide for their condemnation, there is no way by which companies can be brought together and made to consolidate or take leases one from the other, unless the terms and conditions offered are attractive to the security holders.¹⁴⁵

Senator Cummins' revised bill, introduced on April 5, 1926, took slight note of the objections raised at the hearings, the only concessions to the opposition being a lengthening of the period of voluntary consolidation to five years and a change in the policy declaration relating to consolidation.¹⁴⁶ On April 12, 1926, this substitute measure was formally reported out of committee, but too close to adjournment for Senate action. Nevertheless, Senator Cummins, who had been elevated to President pro tem of the Upper Chamber, did not hesitate to state publicly that railway consolidation would become an issue in the next Congress and that he would press for passage of his bill. But in May 1926, Senator Cummins was defeated for the

144 Hearings on S. 1870, pp. 74-97, 105-106.

145 Hearings on S. 1870, pp. 246-247.

146 S. 3840 (69th Cong., 1st Sess.). The requirement of the Transportation Act that competition be preserved "as fully as possible" was changed to read that the systems established should "preserve as between themselves evenly balanced and effective competition, equalizing, so far as practicable, the opportunities of originating traffic and of its interchange and delivery."

Republican nomination in Iowa by Senator Smith W. Brookhart,¹⁴⁷ and he died two months later. With his death, the legislative campaign to enact compulsory consolidation came to an end.

Feeling that the time was ripe for legislation of a different character, the railway executives now began to press for complete elimination of the requirement that a formal plan be published by the Commission and for amendments to the Act which would facilitate permissive consolidations. Accordingly, they espoused a bill introduced in the House in April 1926 by Representative Parker of New York and later introduced in the Senate by Senator Fess of Ohio.¹⁴⁸ This bill, allegedly written by the executives themselves,¹⁴⁹ freed the Commission of any obligation to prepare a plan; it also provided for the condemnation of minority securities and proposed that at the end of seven years the Commission report to Congress the extent to which unifications had taken place and its recommendations as to further proceedings. It is obvious that the Parker bill followed closely the resolution adopted by the directors of the Association of Railway Executives. The railway executives favored particularly the provision of the bill which permitted condemnation of minority securities by agreement of a majority of stockholders. In several important instances, unifications had been tied up in litigation for months and years when minority groups insisted on better treatment and higher prices for their holdings.¹⁵⁰ At hearings on the Parker bill, not only the execu-

147 Although Senator Brookhart held more radical views on railroad legislation than did Senator Cummins, the latter's defeat appears to have resulted from agricultural dissatisfaction in the Midwest.

148 H. R. 11212 (69th Cong., 1st Sess.), April 5, 1926, and S. 4892 (69th Cong., 2d Sess.), December 17, 1926.

149 Mr. J. J. Cornwell, general counsel for the Baltimore & Ohio, stated Colonel Thom had written the Parker Bill. *Railroad Combination in the Eastern Region*, Exhibit C-2226.

150 The application of the Big Four to unify the Cincinnati Northern, the Evansville, Indiana & Terre Haute, filed July 29, 1926 (Finance Docket 5688), and the application of the New York Central to lease the Big Four and its

tives but also the short lines, the National Industrial Traffic League, the Interstate Commerce Commission, and the United States Chamber of Commerce, lined up in its support. In September 1926, Colonel Thom conferred with President Coolidge and obtained White House approval of the bill. However, despite this substantial backing, the Parker bill was not acted upon at the short session ending in March 1927.

With the opening of the 70th Congress, additional pressure was put behind the Fess-Parker amendments to secure their passage and break the consolidation stalemate on the legal front. A writer in the *New York Times*¹⁵¹ contended that mergers had reached a standstill because of adverse decisions by the Commission on Lorie's Southwestern unification and the Nickel Plate unification, also because of the postponement of a decision on the Great Northern Pacific application, and continued litigation on the Big Four unification. In its annual report to Congress for 1927, the Commission again requested relief from the duty of preparing a plan, and asked the legislators to make unlawful "any consolidation or acquisition of control of one carrier by another except with our specific approval and authorization."¹⁵² Representatives of carriers, shippers and the Interstate Commerce Commission again testified for the Fess-Parker bill before the House and Senate committees on interstate commerce, but little headway was made.

subsidiaries and the Michigan Central, filed concurrently in 1926 (Finance Docket 5690), were tied up in litigation for years by minority stockholders, short lines and Ohio interests. In January 1929, the Commission approved the unification on condition that five short lines be included (150 I. C. C. 278). This condition was speedily met. However, minority stockholders sought to set aside the order of the Commission, dated December 2, 1929, permitting applicants to take over their securities on terms and conditions approved by the Commission. The case dragged on through the courts, and the Commission's order was eventually upheld by the United States Supreme Court, November 7, 1932 (287 U. S. 12). Suits by minority stockholders figured in a number of other acquisitions.

151 F. J. Lisman, "Lack of Progress in Consolidation in Last Six Months," *New York Times*, January 2, 1928.

152 Annual Report of the Interstate Commerce Commission, 1927, p. 80.

In April 1928, the Parker bill was favorably reported by the House Committee on Interstate and Foreign Commerce, but the Fess version of the bill did not emerge from the Senate Interstate Commerce Committee until February 1929. In neither house of Congress did the measure reach the floor for debate.

The failure of the Fess-Parker bill may be attributed to several factors, chief among which was a suspicion of the motives behind the measure. Commissioner Eastman had warned that without proper supervision, consolidation might result in large financial profits and increased railroad liabilities.¹⁵³ One Congressman noted a fear in the public mind that overissuance of securities would lead to an increase in rates.¹⁵⁴ Counsel for the railway executives argued that the Commission's power over valuation and rate-making, together with its supervision over the issuance of new securities, would suffice to prevent abuse, but several Congressmen were not convinced. Senator Couzens, who became Chairman of the Senate Committee on Interstate Commerce in 1926, announced that he was interested in "fixing the standard by which the railroads may be consolidated rather than leaving it wholly to the Interstate Commerce Commission,"¹⁵⁵ and observed that the matter of valuation was still unsettled and would ultimately have to be reviewed by the United States Supreme Court. Fears of abuse mounted when the railway executives came out in opposition to the requirement of Section 5 of the Act that value of securities of a new consolidation not exceed the value of the combined properties, as determined by the Commission. Asked what Congress could do to prevent stockjobbing in a consolidation, Vice-President Bledsoe of the Santa Fe answered: "I do not see how you can keep the matter of stock speculation out of a transfer of this kind."¹⁵⁶ Pointing to the obvious financial advantages that

¹⁵³ Hearings on S. 1870, p. 41 (1926).

¹⁵⁴ Hearings on H. R. 5641 (70th Cong., 1st Sess.), pp. 394-395.

¹⁵⁵ Hearings on S. 4892 (69th Cong., 2d Sess.), p. 59.

¹⁵⁶ Hearings on S. 1175 (70th Cong., 1st Sess.), p. 110.

would accrue from passage of the Fess-Parker bill, one Senator remarked he had been informed that "this whole unification was a plan of the bankers."¹⁵⁷

It was repeatedly stated by Congressmen that their chief interest in consolidation was the preservation of the weak lines. In this connection, short line representatives complained that the strong roads were absorbing more prosperous lines and systems instead of weak roads. Executives of important carriers freely admitted they were not interested in weak and unprofitable properties.¹⁵⁸ Questioned as to why a road earning more than a fair return would not take over weak lines instead of paying the excess to the Government as provided in the recapture clause, Mr. Cain, counsel for the short lines, replied that the strong roads never intended to pay any excess whatever to the Government if they could help it.¹⁵⁹ However, the interest of the short lines in passage of the Fess-Parker bill

157 Senator Couzens, Hearings on S. 1175, p. 178. Significantly, the Fess-Parker bill was most warmly supported by executives of the largest railways and by banking and investment interests. Many of the smaller executives were not so eager to see consolidations multiply. The reason for their apathy was described by President Willard of the Baltimore & Ohio, in answer to a question put by Senator Watson of the Senate Committee on Interstate Commerce (Hearings on S. 1175, p. 187).

"The Chairman. Well, it is a general opinion, is it not, among all railroad managements that consolidations must come, and are they not working to that end now?

"Mr. Willard. Well, I think there is a general desire to bring it about. . . . But, of course, you must bear in mind, Senator, that there are 175 class I railroads in the United States, and some five or six hundred of less important roads. They have their separate groups of officers, and they are all human, just as we are, and they may not be so impressed with the importance of consolidation weighed against the effect it may have on them personally. . . . Now you would not expect them to be actively promoting consolidation."

158 Judge Lovett of the Union Pacific stated that the decision whether or not to take over a weak road was not affected by regard for public policy but was "a matter of cold business in every instance." Hearings on H. R. 11212, pp. 100-101.

159 Hearings on H. R. 5641, p. 418.

weakened as their general financial condition improved during the late 1920's.

THE COMPLETE PLAN OF CONSOLIDATION

By the summer of 1928 it had become clear that Congress would not amend the consolidation provisions of the Transportation Act in the manner desired by the Commission, the carriers and other interests. Not only had the Fess-Parker bill failed to get before the House, but it had run into a snag in the Senate Committee on Interstate Commerce, and certain members of that committee, principally Senators Couzens and Wheeler, were growing increasingly critical of railroad combination activity and the failure of the Commission to halt financial abuses. The situation, particularly in the East, was plainly out of control and called for determined action. Prosecutions under the Clayton Act offered little hope of restoring order, and further appeals to Congress for relief from the responsibility of preparing a plan as well as for additional power over voluntary acquisitions of control appeared fruitless.

In September 1928, therefore, the Commission decided to proceed with the preparation of a plan. Commissioner Porter was charged with the task of reporting such a plan for adoption by the full Commission. No publicity was given to the move, and in its annual report for 1928 the Commission merely called attention to previous requests that the requirement of a formal plan be repealed. It was decided not to hold additional hearings to bring the record up to date, since a majority of the Commission felt that the material and other data in the hands of the Commission would furnish all the information necessary to the adoption of a plan.

Without a doubt, the most serious problems faced by the Commission in its drawing up of a plan was the untangling of the eastern railroad situation. In October 1928, officers of the trunk lines met with Commissioner Porter at the latter's invitation in an attempt to iron out the differences between them, but without success. Subsequently, the Baltimore &

Ohio and the Van Sweringens, by joint agreement, filed applications to form the following systems :

Baltimore & Ohio

Reading-Jersey Central
Lehigh & Hudson
Western Maryland
Buffalo, Rochester & Pittsburgh
Buffalo & Susquehanna
Detroit, Toledo & Ironton
Wabash-Ann Arbor

Chesapeake & Ohio

Hocking Valley
Pere Marquette
Erie
Nickel Plate
Virginian
Lackawanna
Bessemer & Lake Erie
Wheeling & Lake Erie
Chicago & Eastern Illinois

It can be seen that these applications not only struck at fifth-system possibilities and the Pennsylvania's interest in the Wabash, Virginian and Ironton, but compromised the New York Central's ambitions to control the Lackawanna. Partly in retaliation against this uncooperative move by its partners, the Central persuaded the Virginian to seek authority to construct a line across the Kanawha River connecting with the Kanawha & Michigan, a New York Central subsidiary. This extension, which the Chesapeake & Ohio argued would divert the Virginian's westbound coal from its lines to those of the New York Central, was approved by the Commission in May 1930 and completed within a year.¹⁶⁰ The breach between the New York Central and its erstwhile partners significantly weakened the pressure for four systems in the East, for now only the Baltimore & Ohio and the Van Sweringens stood for a four-system settlement, while the Central had cooled to the idea and the Pennsylvania was definitely hostile.

Another partnership was terminated about this time, that between President Loree of the Delaware & Hudson and Chairman Williams of the Wabash. Throughout the 1920's these two men had labored together to establish a fifth system in the East, a project which had been handled somewhat roughly by the Commission and the trunk lines. However, following Loree's failure to capture the Lehigh Valley and his sale to the

¹⁶⁰ *Virginian Railway Company Extension*, 162 I. C. C. 522 (1930).

Pennsylvania, Williams resigned his position as vice-president of the Delaware & Hudson and began to pursue his own ends. In May 1929, Williams filed an application with the Commission to form a system composed of the Wabash, the Lehigh Valley, the Wheeling & Lake Erie and the Western Maryland. In the application it was suggested that a sixth system also be created, consisting of the Virginian, the Lackawanna and the Buffalo, Rochester & Pittsburgh, and based upon the Nickel Plate, which was to be severed from the other Van Sweringen roads. Though some quarters professed to see the fine hand of the Pennsylvania behind this application, this suspicion could not be proved.

Leonor F. Loree signified his return to the consolidation wars in September 1929 by applying for authority to add 16 other carriers to the Delaware & Hudson, including all the New England roads (except the Boston & Albany), the Reading system, Lackawanna, Virginian, Western Maryland, Pittsburgh & West Virginia and, as ever, the Buffalo, Rochester & Pittsburgh. This proposed amalgamation of lines sprawled over the eastern railroad map for a total of 14,000 miles, but it is doubtful if anyone took it seriously. One review termed it "little more than a symptom of President Loree's ingenuity and incorrigibility."¹⁶¹

The Commission found the formulation of a complete plan of consolidation a formidable task. The problem of fusing, not only Class I roads, but short lines as well, into a limited number of systems was complicated by wide differences of opinion among commissioners. In October 1929, Commissioner Porter declared there were so many views among the members as to make the situation seem "hopeless."¹⁶² Commissioner Woodlock told President Willard of the Baltimore & Ohio that although members of the Commission might agree on systems in the South and West, they were completely at odds on a program for the Eastern region and might not be

¹⁶¹ *Railroad Combination in the Eastern Region*, Part 3, p. 2148.

¹⁶² *Railroad Combination in the Eastern Region*, Exhibit C-3220.

able to issue a plan at all.¹⁶³ But time was passing, business conditions appeared unsettled after October, and the combination situation in the East was chaotic. Some kind of positive action was called for. Reluctantly, the Commission issued its complete plan, December 9, 1929.¹⁶⁴

Essentially this plan—often referred to as the “final” plan of consolidation—represented a compromise between the existing pattern of railroad control, the conflicting applications before the Commission for approval, and the divergent viewpoints of the Commissioners themselves. A cautious preliminary statement dispelled any idea of the plan’s “finality”:¹⁶⁵

Not all of us have agreed as to all its parts, but all concur in the result. Some of us deem it helpful now to express individual views as to parts of the plan. Others feel that their individual expressions may usefully be deferred until the time for action looking toward the ultimate effectuation of actual consolidations as provided by the act. Section 5(5) provides that after we have adopted a plan, as we here do, we may, either upon our own motion or upon application, reopen the matter for such changes or modifications as in our judgment will promote the public interest. Such application will afford opportunity for further consideration upon adequate and recent records of the various parts of the plan.

It was also stated in the foreword that it had been found impracticable to allocate terminal properties to the various systems, since each terminal presented unique features and required separate treatment. The Commission also took occasion to announce that it looked with disfavor upon holding companies and intended that the proposed systems be independent in fact as well as in name.

¹⁶³ *Ibid.*, Exhibit C-3203.

¹⁶⁴ *In the Matter of Consolidation of the Railway Properties of the United States into a Limited Number of Systems*, 159 I. C. C. 522.

¹⁶⁵ *In the Matter of Consolidation of the Railway Properties of the United States into a Limited Number of Systems*, 159 I. C. C. 524.

The "final plan" contained 21 systems, 19 of them formed from American-owned railroads and the other two composed of lines in the United States owned by the Canadian Pacific and the Canadian National Railways. All the short lines of the country were distributed among these 21 systems. The allocation of the more important properties to these systems is shown in the Appendix, but it will suffice here to indicate the stems upon which the systems of the plan were built:

<i>System No.</i>	<i>Basic Carrier or Carriers</i>
1	Boston & Maine; Maine Central
2	New Haven
3	New York Central; Virginian
4	Pennsylvania
5	Baltimore & Ohio; Reading; Alton
6	Chesapeake & Ohio; Nickel Plate; Erie
7	Wabash; Seaboard; Lehigh Valley; Norfolk & Western
8	Atlantic Coast Line; Louisville & Nashville
9	Southern
10	Illinois Central
11	Chicago & North Western; Chicago & Eastern Illinois; Mobile & Ohio
12	Great Northern; Northern Pacific
13	Milwaukee; Duluth, Missabe & Northern; Duluth & Iron Range
14	Burlington; Colorado & Southern; Katy
15	Union Pacific; Kansas City Southern
16	Southern Pacific
17	Santa Fe
18	Missouri Pacific; Denver & Rio Grande Western; Western Pacific
19	Rock Island; Frisco
20	Canadian National lines in New England; Grand Trunk Western
21	Canadian Pacific lines in New England; Soo lines

Four of the Commissioners who concurred in the result of the plan disagreed with specific features and entered separate opinions stating these differences. Of the separate opinions, that of Commissioner Eastman amounted practically to a dissent. Mr. Eastman observed that as a result of combinations and reorganizations, very few weak lines remained in need of assist-

ance, and voiced serious doubts as to the wisdom of combining roads into large systems:¹⁶⁶

Such sentiment as appears to exist in favor of the consolidation of the railroads into a very few great systems is, I believe, largely artificial. According to my observation, there is very little sentiment of this kind either among shippers or railroad officers. For the most part I think that it emanates from financial circles who are likely to reap large profits from the mere process of putting the roads together. Furthermore, there is reason to believe that the country is becoming seriously alarmed by the progress of consolidations and unifications among industry in general. It is feared that control of industry is rapidly passing into a few hands, with the danger that we shall become predominantly a nation of clerks and subordinates. Perhaps this process is inevitable in some lines of industry, and it may eventually be the fate of the railroads. But there is so much doubt about its wisdom that I see no reason for accelerating the process in the case of the railroads. There are strong grounds for belief that the best results in operating efficiency and service are secured when a railroad system is small enough so that the executive can maintain something like personal contact with the employees all down the line and also with the shippers in the territory served.

Commissioner Eastman favored an increase in the number of systems proposed by the plan, as many as 10 systems in the East based upon the Pennsylvania, the New York Central, the Reading, the Lackawanna, the Baltimore & Ohio, the Erie, the Wabash, the Chesapeake & Ohio, the Norfolk & Western and the Virginian; in the West, besides the systems proposed by the final plan, Mr. Eastman favored a system based upon the Western Pacific-Denver & Rio Grande route and another based on the Chicago Great Western.

Commissioner McManamy seconded Mr. Eastman's views as to the optimum size of rail systems and attacked System No.

¹⁶⁶ *In the Matter of Consolidation of the Railway Properties of the United States into a Limited Number of Systems*, 159 I. C. C. 555-556.

12 of the final plan, which proposed the combination of the Great Northern and the Northern Pacific.¹⁶⁷ Commissioner Taylor's opinion also opposed System No. 12.¹⁶⁸

Commissioner Porter's statement¹⁶⁹ contrasted sharply with that of Commissioner Eastman, since it argued that the systems adopted in the final plan were too many, not too few, in number. Mr. Porter advocated a single New England system and a four-system plan for the East. He thought five eastern systems would leave unchallenged the power of the Pennsylvania and the New York Central, which together had earned more than 52 percent of revenues of Class I eastern carriers during the first six months of 1929. The Wabash-Seaboard system was condemned as impractical; in fact, the Commissioner did not believe any arrangement could succeed in the East unless it had been agreed to by the important trunk lines. In the West, Commissioner Porter thought the Missouri Pacific too weak to lend assistance to a Denver & Rio Grande-Western Pacific route and suggested that the latter roads be supported by the wealthy Burlington.

REACTIONS TO THE PLAN

The complete plan failed to produce any enthusiasm, either within the Commission or on the outside. The number of "concurring" opinions indicated that agreement among the Commissioners had been arrived at by a narrow margin and after considerable compromise. Commissioner Woodlock remarked privately that consolidation was "a nasty mess" and a task which Congress should never have delegated to the

¹⁶⁷ *In the Matter of Consolidation of the Railway Properties of the United States into a Limited Number of Systems*, 159 I. C. C. 568-571.

¹⁶⁸ *Ibid.*, pp. 571-574.

¹⁶⁹ *Ibid.*, pp. 575-588.

¹⁷⁰ *Railroad Combination in the Eastern Region*, p. 2178. Subordinates of the Commission regarded the plan as "fantastic"; examiners who had been working for some time on cases involving acquisition of short lines discovered that they had been reversed without previous consultation. *Ibid.*, pp. 2178-2179.

Commission.¹⁷⁰ When a Wabash representative expressed satisfaction with the plan, the Commissioner retorted:¹⁷¹

Well, I hope you will live long enough to see the Wabash get control of the Norfolk & Western. I know I will not live that long.

Newspaper comment varied from apathy to stinging criticism. The *New York Times*¹⁷² took polite note of the plan's issuance, commenting that:

The groupings proposed on Saturday provided a basis for discussion. They show what combinations could obtain approval. They accomplish little more.

However, in a letter to that paper, Professor Ripley attacked the soundness of the plan, particularly as it related to the Eastern region.¹⁷³ His letter read in part:

The plan is to me decidedly startling and disconcerting because it does not seem to be worked out either on a basis of operating efficiency or financial equality in strength. . . . It is inconceivable for instance that the Wabash which is a string line anyway with nothing but trackage rights East of Detroit by being pieced together with the Chesapeake & Ohio of Indiana line, itself subnormal, and even with the prosperous Lehigh Valley into New York could be built into anything like an even-handed competitor with the powerful Pennsylvania, New York Central, Baltimore & Ohio, and Van Sweringen system. It would be a pygmy among giants.

The *Wall Street Journal*¹⁷⁴ disagreed with the plan so far as the creation of five eastern systems was concerned, and considered the treatment of western roads weak at two places, namely, the splitting up of the Northern carriers and the extension of

¹⁷¹ *Ibid.*, Exhibit C-3274.

¹⁷² *New York Times*, December 21, 1929.

¹⁷³ *New York Times*, December 23, 1929.

¹⁷⁴ *Wall Street Journal*, December 23, 1929.

the Missouri Pacific, a southwestern system, to the West Coast over the Denver & Rio Grande-Western Pacific route. In reviewing the Commission's handling of the consolidation issue, the *Journal* was unusually caustic:

More than eight years ago the Commission published its tentative plan, "in order to elicit a full record upon which the plan to be ultimately adopted can rest." Meanwhile, through inactivity the Commission has allowed the formative stages of the unification movement to escape its control. In now adopting a plan which is in no sense final the Commission has been driven by its own neglect and the increasing conflict of opinion within its ranks to certain trouble-making compromises and makeshifts. In some of its provisions the plan bears internal evidence of a desire on the Commission's part to accept unification ideas of railroad origin; in others it seems almost to betray a deliberate effort to flout them.

On the Street the plan was received without excitement, and rail issues were not significantly affected.¹⁷⁵ It was generally recognized that changes in the plan could be expected and that extensive negotiations and financing would be required to complete the projected systems or acceptable alternatives. Memories of the October crash were fresh in the minds of investors, and business confidence was being restored with difficulty. President Loree, responding to a friend's criticism of the consolidation plan, aptly described the sentiments of financial circles.

We are agreed as to the I. C. C. report on consolidation; however, it is a long way from fruition. Had it come out two years ago when money was plentiful the bankers would have plunged. Now things look different.¹⁷⁶

¹⁷⁵ By the middle of December 1929, stocks generally had recovered about 35 percent of the ground lost during the October crash.

¹⁷⁶ *Railroad Combination in the Eastern Region*, p. 1281. A similar view was expressed by a well known student of consolidation in a feature article for the *Railway Age*. See F. J. Lisman, "The Feasibility of I. C. C. Consolidation Plan," *Railway Age*, January 25 and February 1, 1930.

From other quarters came opposition to the Commission's complete plan. The Massachusetts Department of Public Utilities, the New Jersey Traffic Advisory Commission and the Shippers Conference of New York assailed the plan as inimical to the interests they represented, and Leonor F. Loree, who in addition to his many other activities headed the New York State Chamber of Commerce, appointed a committee which brought in a report criticising the Commission's plan as it related to New York State.¹⁷⁷ In Pennsylvania, Professor Howard Kidd of the University of Pittsburgh directed the work of a committee which, after thorough investigation, concluded that the Commission's plan of consolidation would not prove beneficial to the Commonwealth of Pennsylvania.¹⁷⁸ In Congress, Senator Couzens introduced a joint resolution¹⁷⁹ aimed at suspending all consolidation or unification activity until Congress enacted new legislation to deal with the subject.

Planned consolidation as contemplated in the Transportation Act of 1920 appeared to be a long way off.

¹⁷⁷ This report, prepared by Professor T. W. Van Metre of Columbia University, contended that New York City would be adversely affected by the elimination of competition in that area as proposed in the complete plan.

¹⁷⁸ H. C. Kidd, *Railroad Consolidation and the State of Pennsylvania*. This report objected to the severing of the Norfolk & Western from the Pennsylvania and concluded that the Reading and Lehigh Valley should be left independent.

¹⁷⁹ S. J. Res. 161 (71st Cong., 2d Sess.), 1930.

CHAPTER VII

RAILROAD CONSOLIDATION, 1930-1940

RAILROAD COMBINATION, 1930-1932

THOUGH the stock market collapse of October 1929 heralded the end of the hectic boom of the 1920's, it was some time before the depression set in in earnest. A general recovery in which railroad stocks participated featured the closing months of 1929, and rail shares held up fairly well throughout 1930.¹ In that year, a considerable amount of railroad mileage was consolidated. However, railroad earnings were off in 1930, dropped again in 1931, and in 1932 Class I railroads failed by \$139,204,000 to earn their fixed charges.² The following year many rail companies entered receivership and many more were prevented from doing so only as the result of loans made by the Reconstruction Finance Corporation, a government corporation created in 1932 to extend aid to distressed banks and industries. As railroad traffic and revenues declined after 1930, consolidation activity fell off, and by 1933 had been reduced to negligible proportions.

EASTERN REGION

In the East the Van Sweringens continued to set the pace in acquisitions and stock manipulation. By the summer of 1930 their super-holding company, the Alleghany Corporation, utilizing the proceeds of sales of its securities to the public, had spent \$100,000,000 to obtain control of the Missouri Pacific. In May of that year the Van Sweringens received permission from the Missouri Railroad Commission to acquire control of

¹ The Dow-Jones rail average stood at 144.72 on December 21, 1929, rose to 157.94 in April 1930, and declined gradually to 96.58 at the end of the year. By July 1932, however, the rail average had fallen as low as 13.23.

² Net income of Class I railroads was reported at \$896,806,611 in 1929, \$523,907,472 in 1930, and \$134,761,911 in 1931. In 1932, however, a net deficit of \$139,203,821 was reported. Interstate Commerce Commission, *Statistics of Steam Railways of the U. S.*

the "Mop." Immediately, they displaced Mr. W. H. Williams as president of that road, installing their own directors. The brothers then added a Chicago-St. Louis connection, the Chicago & Eastern Illinois, which had been placed with the Missouri Pacific in the tentative plan. Since, however, the complete plan had allotted the "C. & E. I." to the North Western, the Van Sweringens camouflaged the acquisition with considerable adroitness: The Guaranty Company of New York purchased a majority of the stock of the "C. & E. I." for \$8,000,000 and held it for an "unknown principal," who turned out to be Paine, Webber & Company, brokers for the Van Sweringens; then the Chesapeake & Ohio "deposited" \$5,000,000 with Paine, Webber & Company to cover an "option" on the stock, agreeing to pay the remainder after the Commission's assent to the acquisition had been obtained. In this connection, Senator Wheeler pointed out that if this acquisition had come before the Commission for review during the 1930's, that body would have been placed in the position either of approving Chesapeake & Ohio control or of "making the stockholders of the Chesapeake & Ohio take a terrific licking" on a falling market.³ As a matter of fact, this acquisition was kept secret from the public, the Commission and even from the President of the Chicago & Eastern Illinois until a Senate investigation brought it to light in 1937.⁴ During the period when the "C. & E. I." deal was being put through, the Chicago Great Western came under Van Sweringen influence as the result of defaulted loans made by the Chesapeake & Ohio to the Bremo syndicate who controlled the road. However, the brothers were content to work closely with the Bremo group and never assumed actual control of the road.⁵

³ *Control of the Chicago & Eastern Illinois*, Additional Report of the Senate Committee on Interstate Commerce pursuant to S. Res. 71 (75th Cong., 1st Sess.), 1940, Report 25, Part 4, p. 5.

⁴ *Ibid.*, p. 16.

⁵ *Control of the Chicago Great Western*, Additional Report of the Committee on Interstate Commerce pursuant to S. Res. 71 (76th Cong., 3rd Sess.), 1940, Report 25, Part 12, pp. 39-51.

At its peak, in 1930 and 1931, the Van Sweringen empire consisted of the Nickel Plate, Erie, Chesapeake & Ohio, Pere Marquette, Missouri Pacific, and Chicago & Eastern Illinois, and the brothers held, in addition, substantial interests in the Denver & Rio Grande Western, Kansas City Southern and Chicago Great Western. This network of roads, totalling more than 30,000 miles in length and stretching from Chicago to the Gulf and from eastern ports nearly to the Pacific, represented the largest single aggregation of rail properties in the country.

But the Van Sweringens' fondness for stock market splurges proved fatal to the continuance of their control of this railroad empire. Approximately a third of Alleghany's holdings of railroad securities consisted of stock in the Missouri Pacific; but this road paid no dividends after 1931, and in 1933 entered receivership. As part of a real estate venture—a venture which proved catastrophic to their fortunes—in the vicinity of the Cleveland Union Terminal, the brothers pledged their personal holdings of Alleghany stock to the amount of \$15,000,000. As the value of Alleghany common drifted steadily lower, the Van Sweringens were compelled to add more and more of their stock and personal funds to maintain the amount pledged. Finally, they found their holdings of Alleghany inadequate for the purpose. In desperation they borrowed \$39,500,000 from J. P. Morgan & Co., using the Alleghany stock as collateral.

Several desperate stratagems were employed by the Van Sweringens to plug the continued drain on their resources. In return for past favors, the syndicate controlling the Chicago Great Western “persuaded” that hapless road to purchase 100,000 shares of Kansas City Southern stock from Alleghany at a price more than double the current market quotation, a transaction which assisted in precipitating the subsequent ruin of the Great Western.⁶ At about the same time the Chesapeake

⁶ *Control of the Chicago Great Western*, Additional Report of the Senate Committee on Interstate Commerce pursuant to S. Res. 71 (76th Cong., 3rd Sess.), 1940, Report 25, Part 12, pp. 55-56.

& Ohio began buying Nickel Plate and Erie stock held by Alleghany at values well above the market. Enough securities were transferred in this way to give the Chesapeake & Ohio control of both carriers. However, since the Commission had never authorized the Chesapeake & Ohio to acquire these roads, in fact had specifically disapproved its acquisition of the Erie, the transfer of stock was not called a "purchase" but merely an "option" to purchase at a later date.⁷ The option cost the Chesapeake & Ohio \$3,300,000.

By the end of 1932 the Van Sweringens were at the end of their rope financially. All their holdings of stock in the Alleghany and Chesapeake Corporations had been pledged as security to the bankers, only one of their properties, the Chesapeake & Ohio, was making money, and their personal fortunes had vanished. During 1933 the Missouri Pacific and the Chicago & Eastern Illinois entered bankruptcy, and Alleghany followed them within a year. The Van Sweringen Empire had in fact become a Morgan Empire.

During 1930 and 1931, while the Van Sweringens were occupied in expanding their control of western carriers, the Pennsylvania established itself firmly in control of the principal New England railroads. By the summer of 1931 the Pennsylvania Railroad and Pennroad owned 23 percent of the New Haven's stock, and Pennroad and the New Haven together held 45 percent of the stock of the Boston & Maine. In a letter to the New England governors, President Atterbury informed them of his holdings and assured them that the Pennsylvania could perform a great service by linking New England to the rest of the United States; in case they did not share this view, he offered as an alternative to give up the New Haven and Boston & Maine if the New York Central would part with the

⁷ *Railroad Combination in the Eastern Region*, Report of the Committee on Interstate Commerce pursuant to S. Res. 71 (76th Cong., 3rd Sess.), 1940, Report 1182, pp. 2881-2882.

Boston & Albany.⁸ Aroused by the Pennsylvania's incursions and by rumors that the Maine Central and Bangor & Aroostook might be added to Pennroad's string of conquests,⁹ the New England Governors organized a second New England Railroad Committee. In May 1931, this Committee issued a report¹⁰ recommending that the New Haven and Boston & Maine be merged, but not under outside control. The Committee found the Pennsylvania's holdings of New England railroad properties excessive and thought these holdings ought to be reduced to not more than 10 percent of the total stock outstanding of the New Haven and Boston & Maine, the "excess" to be placed in trusteeship pending sale. The Commission's revision of its plan in 1932 gave substantial recognition to this expression of New England public opinion.¹¹

With apparent indifference to the many signs of business instability that followed the market crash of October 1929, the management of the Baltimore & Ohio pushed through an ambitious program of expansion during the early thirties. In February 1930, the Baltimore & Ohio acquired the Buffalo, Rochester & Pittsburgh¹² despite the vehement objections of another aspirant to the control of that road, President Loree of the Delaware & Hudson. Three months later the Baltimore & Ohio was authorized to purchase the Buffalo & Susquehanna,¹³ again over the protests of Loree, and was permitted to

8 In reply to this suggestion, President Crowley of the New York Central stated that he had no intention of giving up the Boston & Albany. *New York Times*, April 4, 1940.

9 This rumor was denied by the Pennsylvania Railroad, *New York Times*, September 11, 1930.

10 *Report of the New England Railroad Committee to the Governors of the New England States* (1931), pp. 251-258.

11 185 I. C. C. 412.

12 *Buffalo, Rochester & Pittsburgh Railway Company Control*, 158 I. C. C. 779 (1930).

13 *Buffalo & Susquehanna Railroad Corporation Control*, 162 I. C. C. 656 (1930).

finance the purchase with a new bond issue. The cost of these two acquisitions exceeded \$23,000,000. From 1930 to 1932, the Baltimore & Ohio spent more than \$17,000,000 to purchase additional stock in the Reading, despite the fact that the Baltimore & Ohio and the New York Central already controlled that road and the relationship for years had been quite harmonious. But this was not all. In 1931 the Baltimore & Ohio took over a Chicago-St. Louis link, the Chicago & Alton, a transaction later described by a Baltimore & Ohio official as the assumption of the "white man's burden."¹⁴ The Alton had earned its fixed charges only twice in the years from 1918 to 1930 and had a funded debt of nearly \$50,000,000, but the Baltimore & Ohio paid more than \$25,000,000 for its properties. In addition to this expenditure, the purchaser had to meet other debts of the Alton and paid out \$710,000 in fees to Kuhn, Loeb & Co., bondholder committees, trustees, bankers, and numerous law firms participating in the Alton's receivership. The number and size of these payments led Commissioner Eastman to remark that—

Railroad receiverships as they are now handled proved a juicy feast for lawyers, bankers, and the like. They fatten on the corpse. I believe it possible to handle these bankruptcies in a more rational and economical way.¹⁵

In later years the "white man's burden" became increasingly onerous: the Baltimore & Ohio had to advance large sums of money to meet the Alton's interest on bonds and to maintain the property, and in 1938 the management of both roads voluntarily proposed reorganization plans. The Baltimore & Ohio's acquisitions during the critical 1930-1933 period appear to have been anything but judicious.

¹⁴ The official was George Shriver, senior vice-president, who advised against the purchase. *Railroad Combination in the Eastern Region*, Exhibits C-3380 and C-3460.

¹⁵ *Alton Railroad Company Acquisition and Stock Issue*, 175 I. C. C. 301, 316.

In comparison with the aggressive consolidation policies pursued by its rivals in the eastern region from 1930 to 1933, the course taken by the New York Central appears ultra-conservative. During these years, the New York Central continued to dispose of its stock in the Lehigh Valley, which by this time was firmly under the control of the Pennsylvania, and purchased additional Lackawanna common. In May 1930, it was reported that the New York Central owned sufficient Lackawanna stock to exercise control of that important carrier.¹⁶ By the middle of 1933, the New York Central had marketed all its holdings of Lehigh Valley stock and had in its treasury nearly 10 percent of the Lackawanna's common stock.

The Four-Party Plan

In publishing its complete plan the Commission had stated that the door was open for amendments and counterproposals. As a matter of fact, Section 5 (5) of the Act provided that after the adoption of a plan, the Commission, either upon its own motion or upon application, might reopen the subject for such changes as appeared to further the public interest.

Feeling that the Commission might take note of the general dissatisfaction with a fifth system in the East and modify its plan to conform to a four-party agreement, Professor Ripley set out early in 1930 to bring officials of the major eastern carriers together in a new series of conferences. In July 1930, officials of the Pennsylvania, New York Central, Baltimore & Ohio, and the Van Sweringens met for the first time in two years in an atmosphere described by a witness as follows: ¹⁷

Anxiety on the part of the General, indifference on the part of the New York Central. How much can I get out of it on the part of Van, with decided leaning to settlement—but waiting to be courted. B. & O. reasonably satisfied but receptive to reasonable proffer of adjustment.

¹⁶ *New York Times*, May 24, 1930.

¹⁷ *Railroad Combination in the Eastern Region*, p. 2907.

Preliminary discussion, however, revealed that there was as yet little basis of agreement between the conferees.

At the moment when it appeared the conferences might end in the same atmosphere of hostility as had the two previous series of talks, several new developments brightened hopes for a four-party settlement. One of these was the practical elimination of fifth system possibilities in the East. Although Loree had not ceased his efforts to form a fifth system, his sale of the Delaware & Hudson's holdings of Lehigh Valley and Wabash stock to the Pennsylvania had seriously reduced his chances in this regard. In April 1930, Loree received another setback at the hands of the Commission when an examiner recommended denial of his application to construct a line through northern Pennsylvania from Easton to Pittsburgh.¹⁸ On paper at least, the Wabash stood the best chance of carrying through a fifth system, since a fifth system based upon the Wabash and including also the Norfolk & Western and Seaboard had been approved by the Commission. However, the banking world looked upon a combination of the Wabash, Norfolk & Western and Seaboard as a "phantom."¹⁹ President Williams of the Wabash found it impossible to obtain financial backing for the venture from Kuhn, Loeb & Co. or from any other source. Eventually he was compelled to abandon his plans for a separate network. The third fifth-system aspirant, Mr. Frank Taplin, proprietor of the Pittsburgh & West Virginia, and veteran of many battles with the "Big Three," was finally forced to admit defeat when, late in 1930, the Commission denied his application to control the Wheeling & Lake Erie,²⁰

¹⁸ *New York Times*, April 6, 1930. Loree protested the examiner's report, but ran into additional opposition from the Pennsylvania and was finally turned down by the Commission on October 11, 1932. *New York, Pittsburgh & Chicago Railroad Construction*, 187 I. C. C. 598.

¹⁹ This was the term applied to the Wabash-Seaboard system by L. J. Lisman, *Railway Age*, January 25, 1930.

²⁰ Mr. Taplin had only an outside chance to obtain his Great Lakes to tidewater system at this time, since he had sold his controlling interest in the Pittsburgh & West Virginia to Pennroad. However, he continually pro-

and the Baltimore & Ohio's management turned a deaf ear to his offer to purchase the Western Maryland.

As in previous conferences, the most hotly-debated points were the disposition of the Virginian, the Lehigh Valley, and the Lackawanna and the demands of the Pennsylvania for trackage rights along the south shore of Lake Erie. The New York Central did not stand on its rights to the Virginian, which it had unexpectedly received in the complete plan, and some progress was made by the Pennsylvania and Van Sweringens in working out a plan of joint control of the Pocahontas carrier. However, the conflict of interests over the Lehigh Valley and Lackawanna could not so easily be resolved. General Atterbury, who had captured the Lehigh Valley after a long and expensive campaign, was reluctant to see this road, as well as the Lackawanna, in hostile hands. The Commission had, of course, served notice that it considered the Pennsylvania's control of the Lehigh Valley a violation of the Clayton Act, but this decision the Pennsylvania had appealed to the courts, where there was a fair chance of obtaining a reversal. In the meantime, the General conceded a willingness to go 50-50 in the control of the Lehigh Valley with the Van Sweringens but the terms of the sale could not be agreed upon.²¹ In return for concessions made in the cases of the Virginian and Lehigh Valley, the Van Sweringens announced their willingness to give the Pennsylvania trackage rights over the Nickel Plate in the area south of Lake Erie. But the New York Central objected stubbornly to permitting the Pennsylvania to entrench itself in this territory, and a new impasse was created.

tested his independence of Pennsylvania control and insisted he would buy the "P & W Va" stock back from Pennroad if his fifth system came into being. His hopes were finally blasted in *Wheeling & Lake Erie Railway Control*, 187 I. C. C. 604.

²¹ The Pennsylvania was willing to sell the stock for the price paid for it, including carrying charges but excluding dividends. The Van Sweringens, however, wanted to buy at current market prices and to deduct a further sum for trackage rights which they were prepared to grant the Pennsylvania in the Easton-Allentown area. *New York Times*, December 21, 1930.

During the latter part of 1930, it became known that the White House was interested in seeing the parties reach agreement on a consolidation plan for the eastern region. On December 31, 1930, President Hoover publicly emphasized his endorsement of the proposed voluntary consolidation of eastern railroads, excluding New England, and agreed to act as arbitrator of the dispute between the parties involving trackage rights over the Nickel Plate. Immediately, Senator Couzens and a number of other prominent political figures charged that Hoover was bringing "unethical" pressure upon the Commission, which had the responsibility of passing upon any four-party application to modify the complete plan.²² As a result of this opposition, President Hoover withdrew his offer of arbitration but continued privately to urge the conferees to reach an agreement.

Since the Lehigh Valley and the Nickel Plate trackage remained the chief points of issue between the parties, it was decided to submit these matters for arbitration. Accordingly, the Lehigh Valley problem was turned over to a board of two men: Mr. Thomas Lamont, a Morgan partner, and Mr. Thomas Gates, President of the University of Pennsylvania and a Pennsylvania Railroad director. Shortly afterwards the Nickel Plate issue was placed in the hands of Mr. George Slade, son-in-law of James J. Hill and a director of the Hill lines. These men succeeded in effecting a satisfactory settlement of the disputed points,²³ largely by persuading General Atterbury to back down on his demands, and the conferees ratified a tentative agreement on October 1, 1931. Immediately, President Hoover announced that a four-party plan of consolidation for the eastern region

²² President Hoover was defended by Representative Parker of New York and Professor W. Z. Ripley, *New York Times*, January 9, 1931.

²³ With market prices and net earnings declining, and with the roads in considerable need of financial assistance, the influence of the bankers in railroad affairs could be expected to increase. The Van Sweringens owed J. P. Morgan & Co. \$39,500,000, and the New York Central borrowed \$7,000,000 from the Guaranty Trust Company in October 1931. *Railroad Combination in the Eastern Region*, p. 2964.

had been worked out and hailed it as a substantial contribution to business recovery.

As presented to the Commission on October 3, 1931, the four-party application requested that the complete plan be modified so as to make the following changes in assignments of roads in the East:

To the Pennsylvania:	Norfolk & Western; Wabash; Toledo, Peoria & Western; Detroit, Toledo & Ironton; Virginian (half-interest)
To the Baltimore & Ohio:	Western Maryland; Ann Arbor; Delaware & Hudson; Monon; Lehigh & Hudson River
To the Van Sweringens:	Lehigh Valley; Wheeling & Lake Erie; Chicago & Eastern Illinois; Chesapeake & Ohio of Indiana; Virginian (half-interest); western part of Pittsburgh & West Virginia
To the New York Central:	New York, Ontario & Western
To the four parties jointly:	Akron, Canton & Youngstown; Lehigh & New England; Akron, Canton & Youngstown; Montour; Monongahela; eastern part of Pittsburgh & West Virginia

The parties did not mention the fact that J. P. Morgan & Co. were the real owners of the Van Sweringen properties, nor did they submit for the Commission's approval a side-agreement containing 21 articles, one of which provided that if the Commission failed to approve the application or made substantial modifications in the four-party plan, the entire agreement would terminate.

Considerable opposition to the four-party plan developed both before and during the hearings on the application which were held in the opening months of 1932. In the latter part of 1931, the railway labor executives let it be known that they would object to the plan unless adequate safeguards for the protection of labor were included. After a day-long discussion between railroad management and labor officials, an agreement was reached, providing that no employees would be discharged as a result of the proposed consolidations but that vacancies

would not be filled as they arose. In return, the labor executives agreed not to oppose the plan at the hearings. Opposition did, however, crystallize in other quarters, chiefly in New England, whose spokesmen wished to keep the railroads in that area out of the hands of the trunk lines, and in the South, where a number of states objected to the assignment of the Chicago, Indianapolis & Louisville (Monon) to the Baltimore & Ohio. A Fifth Eastern Trunk Line Association was formed in New York, and the Greater New York Shippers Conference came out in opposition to the four-party proposals. The City of Philadelphia appeared at the hearings to object to the allocation of the Reading and Central of New Jersey to the Baltimore & Ohio. As might have been expected, the Delaware & Hudson and the Wabash also attacked the application.

On July 13, 1932, the Commission handed down a decision approving the four-party plan, but with the following modifications:²⁴

1. The Monon was assigned to the joint control of the Southern and Atlantic Coast Line, which had controlled the road since 1902.
2. The Virginian was allocated to the New York Central.
3. The New York, Ontario & Western was left with the New Haven.
4. The Delaware & Hudson retained its independence.
5. The Pennsylvania was required to divest itself of all stock in New England roads, or place this stock in the hands of trustees approved by the Commission.

In a vigorous dissent concurred in by Commissioner McManamy, Commissioner Eastman observed that most of the acquisitions contemplated in the application had already been accomplished, many of them illegally, and that these violations were now being condoned by the approval of the application. Other mergers proposed by the four-party plan, he noted, had

²⁴ *In the Matter of the Consolidation of the Railway Properties of the United States into a Limited Number of Systems*, 185 I. C. C. 403 (1932).

been specifically denied by the Commission. Mr. Eastman charged that New England had been bottled up, and many carriers, including the Seaboard, the Mobile & Ohio and the North Western, left to fend for themselves. Because of its effect on other sections of the country, the Commissioner contended that the four-system modification had "slaughtered" the complete plan, and thought the entire consolidation plan ought to be redone. In attacking the idea that business confidence and rail issues would be improved by the plan, Mr. Eastman put his finger on a major weakness of the entire proposal, the carriers' utter lack of funds to carry out the consolidation unless, of course, the applicants borrowed from the government.²⁵

Except for the exuberance of President Hoover and the bankers, very little enthusiasm was displayed for the new plan. Newspaper comment was generally apathetic or skeptical that any benefit could be derived from the plan under existing conditions. The *New York Herald Tribune*, in an editorial entitled "Another 'Final' Plan from the I. C. C.," asked how the carriers in their poverty-stricken state could be expected to carry out the approved consolidations.²⁶ The financial editor of the *New York Sun* observed—

There may be some grim humor, although not for Pennroad stockholders, in the idea that if Pennsy wishes to keep the New Haven and the Seaboard, the Wabash, and the Lehigh, it may do so and consider itself married without benefit of clergy.²⁷

On the Exchange, railroad securities rallied briefly upon news of the Commission's acceptance of the plan, but for the year as

²⁵ At the hearings Commissioner Eastman asked H. W. Bikle, attorney for the Pennsylvania, if there was any way to get cash with which to purchase lines except to borrow from the federal government. Mr. Bikle answered that there was not "at present."

²⁶ *New York Herald Tribune*, July 14, 1932.

²⁷ *New York Sun*, July 14, 1932.

a whole failed to improve more than industrial and utility issues.²⁸

In July 1932, when representatives of the four trunk line groups met to discuss the Commission's decision, only the Van Sweringens and the Baltimore & Ohio's management seemed anxious to proceed under the plan. By comparison, of course, these two parties had gained considerably more than the Pennsylvania and the New York Central. The Pennsylvania had lost a half-interest in the Virginian and had been shorn of its New England holdings; officials of the New York Central viewed with indifference the Commission's gift of the Virginian, a road which they themselves had agreed to give away, and were irked at several other changes made by the Commission, including the severance of the Lackawanna's Oswego branch from the rest of the system, the assignment of the New York, Ontario & Western to the New Haven, and the requirement that the Central share its Chicago terminals. Notwithstanding the sentiments of the two major principals, after several days of discussion the four parties approved the modified plan, though with certain reservations which they insisted be kept strictly private.²⁹ In its annual report for 1932, the Commission announced it had been advised—

that the presidents of the four applicants referred to have accepted the plan and that they intend to proceed with consolidations in eastern territory, excluding New England, in general accord with our modified plan.³⁰

However, accomplishments under the four-party plan fell considerably short of expectations. The two parties who had been most anxious to see a trunk line agreement signed and who benefitted most from its provisions from the standpoint

²⁸ By July 8, 1932, the Dow-Jones rail average had dropped to 13.23, the industrial average to 41.22 and the utility average to 16.53. At the end of the year, rails stood at 25.90, industrials at 59.93 and utilities at 27.50.

²⁹ *Railroad Combination in the Eastern Region*, pp. 2993-3001.

³⁰ *Annual Report of the Interstate Commerce Commission*, 1932, p. 25.

of an increase in mileage allotted them, the Van Sweringens and Baltimore & Ohio, were the ones least able to take advantage of the plan. The Van Sweringens' hold upon their ailing system was slipping fast and the catastrophic state of their finances made it impossible for them to purchase the Lehigh Valley from the Pennsylvania, as intended in the plan. The Baltimore & Ohio, loaded down with acquisitions made at premium prices in years just prior to the four-party agreement, was struggling financially to keep its head above water. On the other hand, the New York Central and the Pennsylvania had little or no incentive to go ahead under the trunk line plan. The Central's ownership of Lackawanna stock, together with holdings in friendly hands, was sufficient to exercise control of that much-debated carrier. Moreover, the prospects of losing the New York, Ontario & Western and exclusive possession of its Chicago terminals were strong deterrents to action under the plan.

Of all the trunk lines, the Pennsylvania had least to gain and most to lose in carrying out the four-party plan. True, the New England roads could probably be placed in the hands of a trustee, a move which would keep them out of enemy reach, and a result which the Pennsylvania would have to accept sooner or later because of the intense feeling against trunk line control in New England. Perhaps the Pennsylvania's management felt some minor gratification at being permitted to retain control of the Norfolk & Western and the Wabash, but this end could have been achieved without the four-party plan, since no other trunk line was in a position after 1931 to purchase the Norfolk & Western or, for that matter, the Wabash.

But the chief spoil in the eastern region so far as the Pennsylvania was concerned was the Lehigh Valley. And the Pennsylvania stood a very good chance of keeping control of this carrier if the four-party plan were never—and it seemed likely not to be—carried out. Taking the question of control of the Lehigh Valley and Wabash to the courts, on June 16, 1933, the Pennsylvania obtained a reversal of the Commission's order that it dispose of its stock in these two roads, the court deciding

that the purchases had been made for investment and not to restrict competition, thus making them legal under the Clayton Act.³¹ Since the Chesapeake & Ohio-Nickel Plate system could not afford, neither during nor after the Van Sweringen regime, to buy the Lehigh Valley, the Pennsylvania maintained its control over this carrier throughout the 1930's. Finally, in July 1941, following repeal of the provisions of the Transportation Act of 1920 which provided for planned consolidation, the Commission found the Pennsylvania's control of the Lehigh Valley and Wabash consistent with the public interest, and the stock in question was placed in the hands of trustees appointed by the Pennsylvania and approved by the Commission.³² Thus the struggle for the Lehigh Valley ended in a decisive victory for the Pennsylvania Railroad.

SOUTHERN AND WESTERN REGIONS

Only one acquisition worthy of note took place in the South between 1929 and 1933. In the early part of 1930, the Gulf, Mobile & Northern received authority³³ to acquire the New Orleans Great Northern, which it had for some time used as an entrance to New Orleans under the terms of a trackage agreement. Both the Gulf, Mobile & Northern and the New Orleans Great Northern had been included in the Atlantic Coast Line-Louisville and Nashville system in the complete plan.

West of the Mississippi there was some taking over of roads, and at highly inflated prices, during 1930 and 1931, but thereafter shrinking traffic and revenues made themselves felt. Few carriers had funds left for acquisitions or even, in some cases, for paying their own fixed charges. In the Southwest, which in

31 *Pennsylvania R. R. Co. v. Interstate Commerce Commission*, 66 F (2d) 37, 1933, upheld by a 4-to-4 vote of the United States Supreme Court in *Interstate Commerce Commission v. Pennsylvania R. R.*, 291 U. S. 631 (1934).

32 *Wabash Railroad Control*, 247 I. C. C. 365 (1941). Trustees for the Wabash were approved by the Commission in 252 I. C. C. 319 (1942).

33 *Acquisition of Control and Issue of Stock by Gulf, Mobile & Northern Railroad Company*, 158 I. C. C. 481 (1930).

the 1920's had been the theatre of energetic consolidation activity, a number of leading carriers entered receivership. Among these bankrupts in 1933 could be found the Rock Island, the Frisco and the Missouri Pacific.

By far the most important acquisition in the Southwest between 1930 and 1933 was the purchase of the St. Louis Southwestern by the Southern Pacific in 1931. These two carriers had entered into a traffic agreement in 1926, but subsequent events, including the Rock Island-Frisco alliance and the control of the Missouri Pacific by the Van Sweringens, made it appear advisable to the Southern Pacific to solidify its control of the Cotton Belt. At the hearings on the Southern Pacific's application, several southwestern carriers intervened, arguing that the proposed transaction would prejudice their interests. The Rock Island presented evidence showing a large interchange with the Southern Pacific at Tucumcari, New Mexico, and indicating that the Tucumcari route to St. Louis was 400 miles shorter than the Southern Pacific-Cotton Belt route through Corsicana, Texas. The Missouri Pacific argued in a similar vein that the Texas & Pacific-Missouri Pacific route from El Paso to St. Louis was considerably shorter than the Southern Pacific-Cotton Belt route. Four short lines intervened at the hearings, asking to be taken over, and the American Short Line Railroad Association intervened generally in behalf of short lines.

The Commission's approval, granted in January 1932,³⁴ represented the first modification of the complete plan and was given on condition that (1) existing routes of traffic be kept open and (2) two of the short lines be included in the transaction. In defense of the acquisition, the Commission pointed out that terminals could be consolidated at 12 of the 14 points where applicant connected with the Cotton Belt and that the

³⁴ *St. Louis Southwestern Railway Co. Control*, 180 I. C. C. 175 (1932), 158 I. C. C. 481 (1930). This decision was affirmed by the Supreme Court in *Missouri Pacific R. Co. v. United States*, 293 U. S. 524 (1934).

latter would be strengthened by association with the Southern Pacific.

Commissioner Eastman, dissenting,³⁵ pointed to the circuitry of the Southern Pacific-Cotton Belt route and argued that this unification tended to divert traffic from more efficient to less efficient routes. Precisely the reverse, he stated, would occur if the Cotton Belt were made part of the Illinois Central, as provided for in the final plan. Mr. Eastman also thought the price paid for the Cotton Belt stock excessive and reminded his colleagues that they had turned down efforts of the Kansas City Southern and the Katy to buy the Cotton Belt at lower prices. Commissioner McManamy's dissent³⁶ raised two additional points: (1) What effect would this strong Southwest system have on the Missouri Pacific and other lines in the region? (2) What would be the effect of integration upon employees of the Southern Pacific and the Cotton Belt?

In its final plan the Commission had recognized the close relations existing between the Rock Island and the Frisco by placing them in the same system. In 1930 these relations became more intimate after the purchase of 25,000 shares of Frisco stock by the Rock Island at the peak price of \$70 a share. This bit of high finance, brought about by an inside group, was concealed from even the Rock Island's board of directors. Later the Rock Island's chairman testified that this deal was motivated by a fear that the Southern Pacific might take a hand in the affairs of the Frisco as a result of its purchase of some of the latter's stock in 1930.³⁷ In the same year the Frisco leased the Gulf, Texas & Western, but in approving this arrangement the Commission required that the purchase price be no more than \$1,800,000 instead of \$2,300,000, which the Frisco was prepared to pay for the road.³⁸ The final plan, which had assigned

35 180 I. C. C. 175, 207-210.

36 180 I. C. C. 175, 212-216.

37 S. Daggett, *Railroad Consolidation West of the Mississippi River*, University of California Press, Berkeley, California, 1933, pp. 240-241.

38 *St. Louis, San Francisco & Texas Railway Co. Construction, etc.*, 162 I. C. C. 398 (1930).

the Gulf, Texas & Western to the Santa Fe, was appropriately modified. By 1932 the market price of Frisco stock had slumped to \$5 a share and this road, together with the Rock Island, was bankrupt.

During the period from 1930 to 1933, the absorption of the Denver & Salt Lake by the Denver & Rio Grande Western provided a lone combination of importance in Central Western territory. The former road, after completion of the Moffat Tunnel and several hundred miles of tortuous and expensive line west of Denver, was in a precarious financial position, and the lease of the tunnel was itself constantly in litigation. Leaving the question of the tunnel to be settled by state authorities and the courts, in 1931 the Commission approved the lease of the Denver & Salt Lake to the Denver & Rio Grande, on the condition that the latter proceed immediately to construct a 41-mile link between its own line at Dotsero and the line of the Denver & Salt Lake at Orestod, Colorado.³⁹ The decision pointed out that the unification of these properties offered important operating advantages, among them the shortening of the Denver & Rio Grande's line from Denver to Salt Lake by 173 miles, and the opportunity for greater interchange at Denver between the Rio Grande, the Union Pacific, the Rock Island and the Burlington. In September 1932 the Reconstruction Finance Corporation made a loan to the Denver & Rio Grande Western to finance the purchase of the Denver & Salt Lake.

In the Northwest the pattern of control remained unchanged throughout the 1930's. Although the complete plan and the Commission's decision handed down in February 1930⁴⁰ had left the door open for merger of the Great Northern and Northern Pacific, the conditions upon which the Commission's approval hinged, were not inviting to the northern roads. After considerable study, these carriers decided that it would be too difficult and too costly for them to cut the Burlington out of

³⁹ *Denver & Salt Lake Railway Control*, 170 I. C. C. 4 (1931).

⁴⁰ *Great Northern Pacific Ry. Co. Acquisition*, 162 I. C. C. 37 (1930).

their system. Moreover, they did not wish to build up a hostile public opinion which had shown itself incipiently in the hearings on the Couzens resolution and in the petition to reopen the case filed by officials of five western states and granted by the Commission in October 1930.⁴¹ A conference held by officials of the Great Northern, Northern Pacific and Burlington in the offices of J. P. Morgan & Co. resulted in a decision to defer the proposed merger, and in January 1931 the carriers' application was indefinitely withdrawn.⁴²

THE EMERGENCY RAILROAD TRANSPORTATION ACT OF 1933

Early in 1930 Congress served notice that it proposed to play a more vigorous role in the regulation of consolidation and related railroad activities. Towards the end of March, Senator Couzens of Michigan, Chairman of the Senate Committee on Interstate Commerce, introduced in Congress a joint resolution⁴³ aimed at suspending the authority of the Commission over consolidations, and outlawing all acquisitions, including those effected through holding companies, until Congress enacted new legislation to deal with the subject. The resolution received the support of three principal groups: (1) Western interests incensed by the Commission's approval of the union of the Great Northern and Northern Pacific; (2) opponents of holding companies; (3) railroad labor.

It might have been expected that western states and municipalities whose representatives had opposed the application of the northwest roads to form the Great Northern Pacific Company would carry their case to Congress, particularly in view of the split on the Commission which had resulted in dissents by Commissioners Eastman, McManamy and Taylor, and the decision of the United States Supreme Court years earlier which had outlawed a similar combination in the Northwest.⁴⁴ But the

⁴¹ *New York Times*, October 18, 1930.

⁴² *Railway Age*, January 17, 1931, XC, 199-200.

⁴³ S. J. Res. 161 (71st Cong., 2nd Sess.), 1930.

⁴⁴ *United States v. Northern Securities Co.*, 193 U. S. 197 (1904).

interest of Congress in this particular case reflected not only the political influence of western groups, but a general feeling that the entire consolidation situation was out of hand and in need of firmer controls. The circumvention of public policy being carried on by holding companies had come in for an increasing amount of criticism, not only from such publications as the *New Republic* and *Nation*,⁴⁵ but from the financially-minded *Wall Street Journal*, which remarked in an editorial entitled "Drifting" :⁴⁶

In some directions the process follows maps drawn by the Commission, which of course, have no permissive virtue of their own. In other directions ownerships are being built up in flat contradiction of every essential thing that Congress and the Commission have said about consolidation.

All of this means that while the Horatios of the Commission are holding the bridge, unifications of private brand are being bootlegged across the river.

Meanwhile Government, industry and commerce are content to let things drift toward some unknown and unintended outcome.

This situation had been officially brought to the attention of Congress in December 1929, when in its annual report for that year the Commission urged that means be found to control holding company operations in the public interest.⁴⁷

Unexpectedly strong backing for the Couzens resolution came from railway labor, which during the 1920's had evinced only slight interest in the subject of consolidation. No witness for labor had appeared at the hearings on the application to unite the Great Northern and Northern Pacific, and only one labor representative had testified during the numerous hearings

45 "Consolidation—What For?" [Ed.] *Nation*, January 1, 1930; "Consolidation—of Railroads or of Profits" [Ed.] *New Republic*, August 29, 1928.

46 *Wall Street Journal*, March 31, 1930.

47 *Annual Report of the Interstate Commerce Commission*, 1929, pp. 78-83, 89.

on consolidation held by congressional committees from 1924 to 1928.⁴⁸ However, by 1930, the storm signals of business depression were out. The railway brotherhoods feared a drop in rail traffic would be followed by a wave of lay-offs, adding to the decline in the ranks of railway labor.⁴⁹ They were unwilling to see the situation made worse by consolidation. A resolution adopted on March 31, 1930, by the Railway Labor Executives Association,⁵⁰ expressed the conviction that existing laws on consolidation and proposed amendments failed to provide adequate protection for railway labor or for the public, but assisted financiers and promoters in highly profitable deals and manipulations. The resolution stated further :

As representatives of railway labor, we have also watched at close hand the destructive effects upon the employees of changes in the transportation industry, partly the result of programs of efficiency and economy and partly the result of corporate policies not productive of efficiency and economy.

When divisions have been lengthened, when terminals and other facilities have been moved and consolidated, losses amounting to millions of dollars, losses of employment which have affected over 200,000 employees, and losses through part-time employment which have affected almost all railroad employees, have been brought about and in many cases the public gain has been questionable.

At hearings on the Couzens resolution held in April 1930, the Railway Labor Executives Association filed a brief in support of the resolution and several railway labor leaders testified in its favor, including W. N. Doak, then Secretary of Labor.⁵¹

48 This was W. Dougherty, vice-President, Brotherhood of Railway Trainmen, Hearings on H. R. 5641 (70th Cong., 2nd Sess.), 1928, pp. 336-337.

49 Railroad employees numbered on the average 2,022,832 in 1920 and 1,660,850 in 1929. In 1930 this figure declined to 1,487,839. Interstate Commerce Commission, *Statistics of Steam Railways of U. S.*, 1920, 1929, 1930.

50 Hearings on S. J. Res. 161 (71st Cong., 2nd Sess.), 1930, pp. 242-244.

51 Hearings on S. J. Res. 161 (71st Cong., 2nd Sess.), 1930, pp. 241-261, 261-264, 264-273, 421-452.

Railroad management opposed the resolution, though President Willard of the Baltimore & Ohio was the only important executive to appear before the Senate Committee. He thought important economies could be achieved through consolidation, but urged that the rights of labor be protected, suggesting a scheme of retaining all employees and allowing the staff to be reduced slowly by death, retirement and resignation.⁵² Walker D. Hines, attorney for the Great Northern, made a strong defense of the northwest unification and argued that judgment in individual cases should be left to the Commission.⁵³ The resolution was attacked by the American Short Line Railroad Association on the grounds that it would prevent the taking over of short lines as contemplated in the Transportation Act.⁵⁴ Further objection to the resolution came from the Interstate Commerce Commission. Testifying in behalf of a majority of his colleagues, Commissioner Eastman voiced approval of that part of the resolution which dealt with holding companies, but opposed bringing a halt to all combination activity.⁵⁵

The suspension for a time of all power to unify would to some extent make it necessary to continue uneconomical expenditures which could be eliminated by unification. It is possible that in some particular case the results might be serious. It would deprive the short lines of a market for their properties.

On this occasion at least the recommendations of the Commission were accepted, for although it passed the Senate, the Couzens resolution failed to reach the floor of the House. Instead, Congress attacked the problem of consolidation, and the related subject of holding company control from other angles. The House Committee on Interstate and Foreign Commerce went ahead with study of railroad holding companies

⁵² Hearings on S. J. Res. 161 (71st Cong., 2nd Sess.), 1930, pp. 123-141.

⁵³ *Ibid.*, pp. 389-420.

⁵⁴ *Ibid.*, pp. 169-178.

⁵⁵ *Ibid.*, pp. 275-327.

under the direction of Walter M. W. Splawn, former Professor of Economics at the University of Texas and member of the Texas Railroad Commission, and an exhaustive analysis of railroad intercorporate relations was published in 1931.⁵⁶ Over in the Senate, the Committee on Interstate Commerce appointed a special counsel and requested him to prepare a report on the relation of consolidation (and unification) to the public interest. This report, also published in 1931,⁵⁷ reviewed briefly the acquisitions effected under the Transportation Act of 1920, and presented at length statements by witnesses before congressional committees and by other students of transportation on a variety of subjects, including the purpose of Section 5, the economies of consolidation, the place of competition, the weak road problem and the consolidation plan. It concluded among other things (1) that no definite evidence existed to show that large-scale consolidation would result in substantial economies, (2) that equalization of earnings by planned grouping of systems was impracticable, and (3) that if consolidation legislation were continued, provision should be made for the protection of employees and regulation of holding companies.

In February and March 1932, hearings were held before the House Committee on Interstate and Foreign Commerce on a bill⁵⁸ which followed out the Commission's recommendations on new legislation as contained in its annual report for 1929. This bill proposed to give the Commission power to compel the divestment by any noncarrier company of a controlling interest in a railroad if the stock interest had not been approved by the Commission. Dr. W. M. W. Splawn summarized the results of his investigation of holding companies before the Committee, and Commissioner Eastman testified in support of the bill as drawn. However, counsel for the carriers objected to continuing

⁵⁶ *Regulation of Stock Ownership in Railroads*, House Report, 2789, (71st Cong., 3rd Sess.), 1931.

⁵⁷ W. C. Green, *Preliminary Report of Railroad Consolidations and Unifications* (71st Cong., 3rd Sess.), 1931.

⁵⁸ H. R. 9059 (72nd Cong., 1st Sess.), 1932.

the requirement that future consolidations follow the Commission's final plan, advising the Committee that the railroads had not asked for legislation to remove this requirement at the current session of Congress because of the progress being made towards agreement on a four-party plan in the East.⁵⁹ Another part of the bill which undertook to secure the disposal of stock acquired by holding companies without Commission approval was vigorously attacked by the railroads and financial groups on the ground that huge losses would be suffered if sales of stock were made at existing market prices. This argument, and the doubt entertained by some Congressmen as to the constitutionality of a provision forcing sales of securities, led to the withdrawal of this section of the bill when the latter was reported out of Committee. However, neither this bill nor a substitute measure introduced by Congressman Rayburn of Texas succeeded in reaching the floor of the House.

Not only the consolidation provisions but other parts of the rate-making machinery of the Transportation Act were under scrutiny at this time. Particular attention was being focused on the recapture clause, which, it will be recalled, required any carrier earning more than 6 percent of the value of its property to pay one-half the excess into a contingent fund supervised by the Commission for loan to needy roads.⁶⁰ In order to arrive at a base upon which a 6-per cent return could be calculated, the Commission undertook the difficult task of valuing the property of the railroads and keeping the values up to date on an annual basis. In 1929, the Commission estimated that for the years 1920-1928 excess earnings amounting to a little more than \$300,000,000 were payable into the contingent fund.⁶¹ However, in the history-making O'Fallon case, decided May

59 Hearings on H. R. 9059 (72nd Cong., 1st Sess.), 1932, p. 120.

60 The constitutionality of recapture was affirmed by the United States Supreme Court in 1924. *Dayton-Goose Creek RR Co. v. United States*, 263 U. S. 456.

61 *Annual Report of the Interstate Commerce Commission*, 1929, pp. 86-87.

20, 1929,⁶² the United States Supreme Court held that in arriving at its estimates of value, the Commission had failed to give sufficient consideration to the cost of reproduction of the properties valued. The effect of this decision on valuation was catastrophic: the Commission estimated that it would require six years to revise its previous valuation estimates, and that even at the end of that period the work would hardly be current owing to accumulation during the interval.

In a special report to the Senate Committee on Interstate Commerce, May 17, 1930,⁶³ the Commission recommended that the recapture clause be repealed. Two reasons were given: (1) the time and expense involved in collecting the money found due the government, and (2) the difficulty of making the funds useful after recapture.⁶⁴ The Commission also pointed out that since, in theory at least, recapture was inseparably linked with the other provisions of Section 15 (a), the question would inevitably arise if the recapture provision was repealed, whether the entire section ought not to be repealed or at least superseded by some other statutory provision having a similar purpose. After further consideration of the problem, on January 21, 1931, in another letter addressed to

62 *St. Louis & O'Fallon Ry. Co. v. United States*, 279 U. S. 461 (1929).

63 *Annual Report of the Interstate Commerce Commission*, 1930, p. 86.

64 Another objection to recapture was that it took from a railroad during good years and made no provision for lean years. The case against the recapture clause was summarized by the Interstate Commerce Commission in 1931 as follows (*Fifteen Percent Case*, 178 I. C. C. 581):

"The present recapture provisions impose in their enforcement a vast expenditure of time and money upon both the government and the railroads, they provoke litigation over complicated questions of valuation and accounting, they encourage extravagant expenditures by the more prosperous companies when times are good, they hang like a cloud over the credit of many companies when times are bad, and under the present law there is no effective way of using the funds to public advantage if they are recaptured. The problem presented by the varying earnings of different railroads can better be met in other ways, such as consolidations, pooling arrangements and the adjustment of divisions."

the Senate Interstate Commerce Committee,⁶⁵ the Commission urged abandonment of the rule of rate-making embodied in Section 15a. It was pointed out that the railroads had never been able, since 1920, to obtain the aggregate earnings contemplated in Section 15a and were faced with constantly increasing competition from other forms of transportation. Moreover, said the Commission, Section 15a took—

no account of industrial conditions, of the volume of traffic moving, or of the value of the service to the shippers. Strictly administered, it would lower freight rates in times of general prosperity, when traffic moves freely, and raise them in times of financial depression, when little traffic moves.

The recommendations of the Commission that the recapture clause and Section 15a be repealed were repeated in its annual reports for 1931 and 1932.

By 1933 the entire subject of consolidation was in the news again, but from a somewhat different angle. This time it was not a question of getting the railroads together and pleading with them to reach an agreement which would stimulate railroad recovery by boosting security values and restoring business confidence. That line of approach culminating in the Four-Party Plan of 1932 had significantly failed as railroad traffic and revenues remained at starvation levels well into 1933. Instead, the change of administration and of public sentiment forecast action of a more drastic character in which the initiative would not be left to the carriers. For one thing, it was generally known that President Roosevelt, who took office at the beginning of 1933, strongly favored consolidation and disapproved of the policy of enforcing competition where traffic was inadequate to maintain competing lines.⁶⁶ Still more im-

⁶⁵ *Annual Report of the Interstate Commerce Commission*, 1931, pp. 347-348.

⁶⁶ In a speech delivered at Salt Lake City, Utah, September 17, 1932, Mr. Roosevelt stated: "I believe the policy of enforcing competition among railroads can be carried to unnecessary lengths. For example, the Interstate Commerce Commission should be relieved of requiring competition where

portant, the Administration was believed to lean in the direction of enforcing consolidation.

In February 1933, the National Transportation Committee, headed by former president Calvin Coolidge, issued a report which found that changed conditions, including new forms of transportation, made it "unnecessary for the government further to create and foster competition with or among railroads as a defense against monopoly" and urged that consolidations "be hastened and, where necessary, enforced, looking eventually toward a national system."⁶⁷ In March a prominent member of this Committee, ex-Governor Alfred E. Smith of New York, came out publicly in favor of mandatory consolidations. It became known, furthermore, that F. H. Prince, a Boston banker and former president of the Pere Marquette, was working on a plan at the suggestion of the White House which envisaged consolidation on a much broader scale than the Commission's complete plan.

Without freight, funds or credit and fearing that the Administration might be thinking of compulsory consolidation or, even worse, government ownership, representatives of the railroads met with bankers and personal advisers to President Roosevelt in the middle of March 1933, to discuss what changes in legislation were needed to relieve the railroads' distress. Considerable attention was given to the problem of consolidation. At the conclusion of the talks it was revealed that, while the executives did not know exactly what was in the President's mind, they expected to see the four-party plan drastically modified as the result of coming legislation which would call for the elimination of circuitous routes, expensive duplication of terminals and other facilities, and the dropping of other costly features inherent in the plan as it stood.⁶⁸ It was said to be gen-

traffic is insufficient to support competing lines, recognizing, of course, the clear and absolute responsibility for protecting the public against any abuses of monopolistic power." *New York Evening Post*, September 18, 1932.

⁶⁷ *New York Herald Tribune*, February 15, 1933.

⁶⁸ *New York Times*, March 19, 1933.

erally agreed that the clause of the Transportation Act requiring maintenance of competition should be abrogated.

Quite unexpectedly a committee of top railroad men was called to the White House and at the same time F. H. Prince was requested to submit his plan for discussion.⁶⁹ The Prince Plan, said to have the backing of important banking and investment groups, proposed the creation of seven systems, two in the East, two in the South and three west of the Mississippi, and was drawn up in such a way as to concentrate traffic on selected main routes, reducing yard and terminal handling and eliminating duplicate lines and facilities. Proponents of the Prince Plan estimated that it would save some \$743,489,000 in annual operating costs. Bondholders under the plan were protected by preference given to bonds on the "legal list" for fiduciary investment, as well as by a federal guaranty of a fair return to the consolidating carriers. Protection was also extended to workers displaced under the plan by allowing them halfpay for a period of two years after separation.

As might have been predicted, the railroad executives did not take kindly to the Prince Plan. Its provisions were far too sweeping, the proposed reduction in systems and personnel (including executives) too severe, the incentives for consolidation too limited, to suit them. They therefore considered it essential to forestall the plan or any large-scale consolidation scheme that might be put in its place, and to press for a partial or piecemeal program to reduce costs and bring revenues and expenditures into better balance. In this connection it was suggested that a federal supervisor might be appointed with broad powers to effect savings in operating costs, and that railway capital structures ought to be modified so as to reduce fixed charges.

In their struggle to avoid having a large-scale consolidation program thrust upon them, the executives found themselves

⁶⁹ Several other consolidation plans, including the Commission's modified plan, were discussed, but attention was concentrated largely on the seven-system Prince Plan. The latter was chiefly the work of John W. Barriger III.

allied with their employees. On March 21, 1933, A. F. Whitney, Chairman of the Railway Labor Executives Association, requested a Senate investigation of the railroads and stated that labor was "unalterably opposed" to any scheme that suggested "further railroad mergers at the expense of the public and the railroad employees."⁷⁰ Attacking the Prince Plan directly, representatives of railway labor termed its provisions for the protection of labor "inadequate" and asserted that it would result in adding 300,000 rail workers to the list of the unemployed. Going further, they stated that if the plan were considered in terms of normal employment on the roads, the number to be thrown out of work would be increased to 650,000. Another argument was added to those of the railway labor executives. This was the estimate made by Commissioner Eastman that the plan would cost the government \$2,000,000,000 because of the necessity of guaranteeing a return to the separate companies whose properties would be consolidated.

In the end, the White House decided to let wholesale consolidation wait until the results of the compromise federal coordinator plan could be observed. Commissioner Eastman was represented⁷¹ as favoring this plan, which proposed to set up, in addition to an overall coordinator, regional coordinators directly responsible to him in the seven traffic zones outlined in the Prince Plan. Accordingly, on May 4, 1933, President Roosevelt sent a message to Capitol Hill⁷² which pointed out that traffic was insufficient "profitably to utilize existing railway facilities and the supplementary facilities provided by new forms of transportation" and urged Congress to enact new legislation providing for (1) repeal of the recapture provisions of the Interstate Commerce Act; (2) control of railway hold-

⁷⁰ *Chicago Tribune*, March 20, 1933.

⁷¹ *New York Times*, April 2, 1933.

⁷² Emergency Legislation for Relief and Regulation of the Steam Railways of the United States. Message from the President of the United States, House Document 32 (72nd Cong., 1st Sess.).

ing companies by the Commission; and (3) creation of a Federal Coordinator of Transportation. It was stated that the Coordinator's functions were to promote action to avoid duplication of service, to encourage financial reorganizations, also to render useful service in maintaining railroad employment at a fair wage.

Hearings on legislation embodying these recommendations were held promptly by the appropriate Senate and House Committees and, on June 16, 1933, Congress passed the Emergency Railroad Transportation Act.⁷³ Among the amendments to the Interstate Commerce Act was the substitution in Section 15a of a new rule of rate-making which removed the direction given the Commission in the Act of 1920 to prescribe rates which would yield the carriers a fair return on a fair value of their properties, a requirement which had given rise to demands for increased rates as revenues fell off during the depression. No longer was the adequacy of revenues the sole criterion to be used in fixing rates as it had been under the Transportation Act of 1920. In the Emergency Act the Commission was directed to consider such things as the effect of rates upon the movement of traffic, a matter of prime importance in lean years, also the public need for efficient and low-cost service. At the same time another essential part of the rate-making and revenue-equalizing machinery of the Transportation Act of 1920, the clause providing for recapture of excess earnings, was abandoned. The 1933 Act repealed this clause retroactively, and ordered all excess earnings paid into the Commission's contingent fund to be returned to the contributing carriers on a pro rata basis. A third amendment to the Interstate Commerce Act gave the Commission jurisdiction over non-carrier holding companies with railroad interests.

Perhaps the most significant feature of the Act of 1933 was the emphasis placed upon consolidation. The creation of a Federal Coordinator of Transportation with authority to investi-

⁷³ 48 U. S. Statutes 211.

gate and recommend action to prevent wasteful duplication in service indicated that the Administration and Congress wished to determine the usefulness of consolidation as a means of reducing costs and improving efficiency of service. It will be recalled that discussion leading up to the Act of 1920 minimized this aspect of consolidation, and stressed primarily the role of consolidation, along with recapture, in balancing returns among systems and preserving the life of weak lines.⁷⁴ In 1933, the suggestion that returns be balanced could be regarded as frivolous. The real problem so far as most railroads were concerned, was to provide the basis for any return whatsoever.

In an effort to encourage consolidations under the Interstate Commerce Act, the 1933 amendments combined paragraphs (2) and (6) of Section 5 into a new paragraph—Section 5 (4)—so as to bring all mergers, consolidations, leases, purchases or other acquisitions of control, under a single heading. In passing on applications made under Section 5(4) the Commission was instructed to consider, first, whether the proposed extension of control would harmonize with the complete plan, and, second, whether it would promote the public interest. As a further inducement to the carriers, and to prevent delays in valuation from interfering with consolidation, the requirement of the Act of 1920 that the securities of the new company should not exceed the value of the consolidated properties was eliminated.

The Emergency Act of 1933 also contained provisions designed to protect the interests of labor. It was stated that labor was to be represented along with railroad management on the regional committees set up to assist the Coordinator in his work. Still more important, Section 7 of the Act declared that nothing done under the Act should reduce the number of employees in the service of a carrier below the level of May 1933 (after deducting the number removed by death, retirement and resignation) or deprive an employee of the type of work

⁷⁴ See Chapter III.

performed or the compensation received during May 1933. Furthermore, the carriers were directed to reimburse their employees for losses and expenses incurred in transferring from one locality to another as the result of projects carried out under the Act.

THE FEDERAL COORDINATOR

Shortly after the passage of the Emergency Act of 1933, the President appointed Commissioner Joseph B. Eastman to the post of Federal Coordinator of Transportation. The work of the Coordinator had two major aspects: (1) the consolidation studies undertaken by the Coordinator's staff and (2) the efforts made by the Coordinator to bring about economies in railroad operation. To carry on the research work, Mr. Eastman employed a small but well-qualified staff of transportation experts which, over a period of three years, produced a series of significant reports on railroad technology and operations.⁷⁵ These were accompanied by a valuable set of studies of carrier regulation together with recommendations for new legislation.

As a major part of his assignment, the Coordinator carried on an intensive analysis of the economies claimed to result from the adoption of the Prince Plan. This plan was selected by the Coordinator for study, rather than any of the Commission's plans, because it offered greater opportunity for savings through the elimination of waste and duplication of facilities.⁷⁶ The major outlines of the Prince Plan are shown below:

System No. 1:	All Van Sweringen properties and all New York
(Eastern Region,	Central properties authorized in the 1932 "modified"
North System)	plan; northern New England lines.

⁷⁵ Some of the more important reports were: *Freight Traffic Report*; *Passenger Traffic Report*; *Report on Freight Car Pooling*; *Container Report*; *Reports on Economy Possibilities of Regional Coordination Projects*; *Railway Traffic Organization Report*; *Memorandum on the Application of the Clearing House Principle to the Business of the American Railways*.

⁷⁶ *First Report of the Federal Coordinator*, Senate Document 119, (73rd Cong., 2nd Sess.), 1934, pp. 23-24.

- System No. 2: All Pennsylvania and all Baltimore & Ohio properties
(Southern Region: approved in the modified plan; southern New Eng-
South System) land lines.
- System No. 3: Atlantic Coast Line-Louisville & Nashville system;
(Southern Region, Seaboard; Gulf, Mobile & Northern; Florida East
Southeast System) Coast.
- System No. 4: Illinois Central System; Southern System; Mobile
(Southern Region & Ohio.
Mississippi Valley
System)
- System No. 5: Great Northern, Northern Pacific, Burlington and
(Western Region, other Hill lines, except Colorado & Southern; West-
Northwest System) ern Pacific; Wabash east of Mississippi.
- System No. 6: Union Pacific system; Southern Pacific system;
(Western Region, North Western; Rock Island; Kansas City Southern;
Central System) Frisco; Cotton Belt.
- System No. 7: Santa Fe system; Denver & Rio Grande Western;
(Western Region, Missouri Pacific system; Colorado & Southern south
Southwest System) of Denver; International-Great Northern

It will be recalled that backers of the plan had estimated that it would produce annual savings of more than \$743,000,000, approximately 30 percent of railroad operating expenses in 1932. Had these savings been made, the seven regional systems, instead of showing deficits in 1932 (as indicated by the total revenues and expenses of the constituent properties), would have enjoyed earnings on capital stock ranging from 1.8 to 13.9 percent.

Regional groups of experts, composed of railroad executives and representatives of the brotherhoods, and headed by W. B. Poland, a veteran railroad engineer, made detailed studies of the consolidations proposed in the Prince Plan. Their conclusion was that annual savings under the plan would amount to no more than \$218,000,000. However, the assumptions made by these regional committees were not always the same as those underlying the Prince Plan.⁷⁷ There is reason also for believing

⁷⁷ For example, the Prince Plan assumed a level of traffic to be handled by all lines and facilities equal to 1929. The Poland Committee, however, assumed a level equal to 1929 plus 25 percent.

that the estimates of regional committees were unduly conservative, since it appears that many members of these committees allowed themselves to be influenced by consideration of competitive advantage and by their own antagonism to consolidation.

In many cases where members of the Coordinator's staff had an opportunity to check projects which the Regional Coordinating Committees dismissed for "lack of merit" important operating economies were found.⁷⁸ Mr. John W. Barriger, framer of the Prince Plan, worked with the Coordinator while the survey was being made and, since he accepted its conclusion as final, did not have occasion to analyze the Poland Committee's report at the time it was made. He has, however, consented to furnish the author with a brief criticism of that report. Mr. Barriger stated:

It was my privilege to collaborate with the Poland Committee when it studied the estimates made for the operating economies which a consolidation would permit. The principal difference in their conclusions and ours arose out of the fact that the Prince Plan estimate evaluated the maximum ultimate prospective economies, which it was recognized might not become wholly available for 4 or 5 years. The Poland Committee considered only those savings which could be assured of immediate attainment. Furthermore, in the interest of providing more service on secondary routes, the Poland Committee did not assume as complete concentration of traffic on designated main lines as the original estimate. Furthermore, those of us who worked on the Prince Plan endeavored to evaluate all of the opportunities for saving through unified operation. The Poland Committee disregarded many of these in the interest of maximum conservatism. It so happened that the Poland Committee included several members who were very much opposed to large-scale consolidation in any form and I think that the majority members whittled down the figure to one which the dissenters would accept in order that the report would have the signature of all of the committee members.

⁷⁸ See B. N. Behling, *Railroad Coordination and Consolidation, A Review of Estimated Economies*, Interstate Commerce Commission, Bureau of Statistics, May 1940, p. 25 ff.

In addition to their review of savings possible under the Prince Plan of consolidation, the Coordinator's staff also estimated the amount of economies which might be brought about as the result of coordination. These economies, evaluated at a total of \$358,450,000, were to be accomplished by the following measures:

<i>Coordination Measure</i>	<i>Savings</i>
1. Pooling of freight cars	\$100,000,000
2. Unification of terminals	50,000,000
3. Integration of merchandise traffic	100,000,000
4. Changes in passenger service	95,000,000
5. Unified handling of railway stores	8,000,000
6. Unified handling and disposition of scrap	4,700,000
7. Centralization of railroad fiscal work	750,000

Total savings from these measures \$358,450,000

The Coordinator's staff went even further and calculated savings which might flow from a modernization and reorganization of equipment repair facilities. As a result of a national program involving the expenditure of \$1,141,350,300 for construction of new repair shop facilities and the retirement of \$1,213,561,000 of old equipment, it was estimated that savings of \$365,902,000 per year (equal to 32 percent of the cost of repair) might be realized in the maintenance of rolling stock. At another place in the Coordinator's report, analysis of the data indicates that some \$112,000,000 might be cut from the costs of interchange as a result of unification of freight yards. Finally, the report suggested that coordination of rail and truck transportation and the use of standard transferrable containers might reduce carrying costs by as much as \$330,000,000, an amount equal to 13 percent of rail freight revenues in 1932.⁷⁹

⁷⁹ It would be misleading to combine the above figures in order to arrive at an overall estimate of savings from consolidation and coordination, for the reason that much statistical duplication would result. At many points, consolidation and coordination are so interrelated that a savings through the one materially affects possibilities of savings through the other. See Behling, *op. cit.*, p. 55.

In a report on the legal aspects of consolidation, Mr. Leslie Craven of the Duke Law School faculty reached the conclusion that the government had power to make consolidations compulsory. This conclusion was based upon three legal propositions:⁸⁰

- (1) Congress, in the exercise of its power to regulate commerce, can require compulsory unification of the various railroad companies into designated corporations;
- (2) It can authorize the creation of Federal corporations, and can require them to acquire, and the existing companies to grant, ownership or control of the operating railroad property;
- (3) It can forbid the existing companies to operate in interstate commerce, unless such ownership or control is conveyed to the Federal companies as required.

In order to bring about the acquisition of control by the federal government, Mr. Craven suggested that there be an exchange of stock between the private companies and the new federal corporations, without the use of cash.⁸¹ In his recommendations to Congress, the Coordinator urged that legislation be enacted along the following lines:⁸²

- (1) Compulsory consolidation to begin within a period of four years;
- (2) Creation of federal corporations to hold the consolidated systems, the government to have representatives on the boards of directors of these corporations but not to control them. Only 30 percent of the voting power in each corporation should be exercised by the government, the remainder by private

⁸⁰ *First Report of the Federal Coordinator*, pp. 24-25.

⁸¹ Whether the use of cash could be avoided in cases where securities were condemned was debated by Mr. Craven and Judge Fletcher, general counsel of the Association of American Railroads in the *ICC Practitioners Journal*, February and March 1934.

⁸² *First Report of the Federal Coordinator*, p. 86.

stockholders. Representatives of the bondholders might hold seats on the boards but could not vote.

(3) Establishment of the permanent office of Coordinator of Transportation.

It should be noted that the Coordinator did not favor the idea of a general plan of consolidation to be accomplished either immediately or gradually over a period of years. As a matter of fact, Mr. Eastman doubted the necessity or desirability of adhering to any fixed plan of large-scale consolidation, and suggested that each proposed unification should be considered chiefly in the light of its relationship to the public interest. In his first report, the Coordinator stated that a bill embodying his recommendations was under preparation and would be submitted at a later date. However, no such bill was ever formally transmitted by Mr. Eastman, and Congress made no changes in the consolidation laws during the Coordinator's term of office.

Whatever the merit of the studies and reports of the Federal Coordinator, actual accomplishments under the Emergency Act were meager. For this the unsympathetic attitude of railroad management was primarily to blame. The Act of 1933 did not give the Coordinator coercive powers; consequently, Mr. Eastman was compelled to rely upon the voluntary and cooperative action of railroads to carry into effect the unifications which were found, after investigation, to be desirable. However, the Coordinator found that cooperativeness was not a major trait of railroad executives, even in time of need. Said Mr. Eastman of railroad executives, even in time of need. Instead, said Mr. Eastman.

Their habit of mind is intensely individualistic and suspicious of collective action. When such action is proposed, notwithstanding that it may be for the good of the industry as a whole, the normal executive will at once seek to determine how it may affect his railroad in comparison with others. It is easy for him to fear that it may have an adverse effect from that point of view, and if he does, he is against the proposition. He

is particularly wary of any collective proposal which has a Nation-wide aspect, for he sees in it what he regards as a tendency toward "nationalization" of the railroads, and, at all events, a decrease in the importance of the local managements.

However, part of the failure to make progress under the Emergency Act may be explained by the provisions of the Act which safeguarded the jobs and salaries of railroad labor. These tended to retard consolidation, since practically every program to eliminate competitive waste involved a displacement of workers. That the Coordinator himself, however, did not consider these provisions insurmountable barriers is shown in the following statement: ⁸⁴

It is beside the point to talk about labor restrictions when the managements are themselves unable to agree, or for other reasons are unwilling to act constructively. As a matter of fact, section 7(b) has never been an insuperable obstacle. It does not prevent but only defers economies, and its effectiveness in this respect has steadily lessened with the passage of time since its enactment. This is because it protects only those who were employed in May 1933, and there have been substantial changes in personnel since then.

The Association of American Railroads, formed in 1934 to coordinate the work of the carriers with that being carried on by Mr. Eastman and his staff,⁸⁵ adopted a critical attitude towards a majority of the Coordinator's proposals. His suggestion that the railroads might investigate opportunities for saving fuel and improving locomotive utilization was passed over with the assertion that enough was being done in this

⁸⁴ *Ibid.*, p. 38.

⁸⁵ The Association of American Railroads was organized October 12, 1934, as a merger of the American Railway Association and the Association of Railway Executives. Mr. Eastman had suggested such an organization as a means of coordinating policy and operations some years before.

direction.⁸⁶ A recommendation that the Association adopt a new plan for pooling box cars evoked a similar response.⁸⁷ The Mechanical Division of the Association lost no time in urging that the Coordinator's report recommending study of a national system of equipment repair facilities be filed. On the other hand, progress was being made towards a unified system for handling scrap and specification of standard transferrable containers.

Officers of the Association alternately asserted that the Coordinator's efforts were superfluous since the railroads could be depended upon to carry out projects to reduce wastes of their own initiative, or blamed the failure to consolidate upon the labor provisions of the Act.⁸⁸ On February 1, 1936, shortly

86 "Report of the Mechanical Division of the Association of American Railroads to the President of the Association," *Coordinator Reports Considered by the Association of American Railroads*, January 17, 1938 (single copy), Transportation Building, Washington, D. C. The Coordinator's study of "Comparative Costs of Steam Locomotive Repairs by Districts" reported that locomotive repair costs in the Eastern District were 40.2 percent higher per locomotive-mile and 39.8 percent higher per horsepower-mile than in the West, with similar higher unit costs in the West as compared with the South. The Association of American Railroads study concluded: "In view of the improved fuel economy and locomotive utilization which has been secured by methods now established for some 15 years, and with every prospect that there will be an increased effectiveness as a result of conditions brought about by our organization of the Association of American Railroads, we feel it is not necessary to make any change in existing arrangements at this time.

87 *Ibid.*, pp. 7991-8026. The Association concluded: "The proposal [for box car pooling] substitutes a plan which has never been tried, with results uncertain and problematical, for one which is now automatic, effective and entirely satisfactory in meeting the requirements of public service for the class and type of equipment required."

88 M. J. Gormley, Executive Assistant to the President of the Association of American Railroads, said in a speech: "The coordinator law was designed to reduce wastes but some smart boy put in a provision that we could not lay off any one. Before the law was enacted, we had a great many communities working out terminal unifications and other economies. The coordinator took up these projects right away quick." *New York Times*, November 28, 1935.

before the termination of his office, Mr. Eastman "ordered" ⁸⁹ the unification of 11 terminal properties. However, these orders, like most of the Coordinator's previous recommendations, brought forth protests from railway labor, and no action at all from the carriers.

In the early months of 1936, when it appeared likely that the Coordinator's office might not be renewed after June of that year, the railroad brotherhoods entered into direct negotiations with the railroad executives to protect themselves from unemployment resulting from future consolidations. Simultaneously, a bill ⁹⁰ designed to accomplish the same end was introduced by Senator Wheeler and Representative Crosser in Congress. This bill was vigorously attacked by the Association of American Railroads. In March, President Roosevelt intervened in the dispute with an appeal to railroad management and labor to agree upon a satisfactory plan of employee dismissal. The conferences were resumed and, in May 1936, a majority of Class I railroads and the brotherhoods signed an agreement which provided for compensation to men displaced as a result of combinations, the size of payment varying according to the employee's term of service.⁹¹ It was privately understood by the

89 In issuing these "orders," Mr. Eastman said: "Voluntary action on the part of the carriers is much to be preferred, and I have endeavored to encourage such action in every possible way. These efforts, however, have not met with success, and the time has come to use the authority which the act confers. As a first step, I have selected for proposed orders eleven terminal unification projects scattered throughout the country. These are simple projects; they present no operating difficulties; they cannot impair service; and the plans are those which committees of carrier officers have themselves developed. These projects will, I believe, afford a clear cut test of the policy of coordination and of the authority of the government to order it. The first step may have the effect of stimulating voluntary action on the part of the carriers. I hope that it will. Such action is in their own interest, as well as in the public interest, and there is no sound reason why they should not go ahead." *Railway Age*, February 8, 1936. At the request of the labor committees, Mr. Eastman agreed to postpone his orders for 30 days. Later on, they were entirely forgotten.

90 S. 4174 (74th Cong., 2nd Sess.), 1936.

91 The "Washington Agreement," as it was called, provided for a "coordination allowance" or "dismissal wage" for men dropped as a result

parties that neither side would press for a renewal of the Coordinator's office, and this result was accepted by the Administration and Congress.

Following the termination of the office of Coordinator, the Association of American Railroads reviewed many of the projects which had been submitted to the Coordinator by the regional committees. There were in all 703 projects, involving primarily unification of terminals, which the Coordinator's staff estimated would save \$30,695,864 in annual expenses if carried out.⁹² Of a total of 685 cases studied up to January 17, 1938, the Association reported that 25 had been made effective with consequent savings of \$263,671 a year, and in four additional projects not investigated by the Coordinator economies of \$72,000 annually had been realized. Fifteen of the projects were removed from consideration because of abandonment of facilities, and 641 were dropped because of "no merit." Among the reasons given for lack of merit were the following: (1) Facilities inadequate to handle increased traffic; (2) Savings already realized by the carriers; (3) Savings offset by cost of compensating displaced employees; (4) Savings negligible; (5) Operational difficulties.

RAILROAD COMBINATION, 1933-1940

The long depression steadily sapped the vitality of American railroads. Despite a slight upturn in business beginning in the latter half of 1933, Class I carriers failed for three successive

of mergers equal to 60 per cent of their monthly wage. Payment was to range from periods of 6 months for those employed between one and two years to 60 months for any in service 15 years or more; persons demoted were to retain their old pay for periods up to 5 years, and moving and traveling expenses, as well as losses resulting from the sale of homes, were to be paid by the roads.

⁹² This figure did not include cost of compensating displaced workers as required in Section 7b of the Act. See *Coordinator Reports Considered by Association of American Railroads* (single copy), Transportation Building, Washington, D. C.

years—1932, 1933 and 1934—to earn their fixed charges.⁹³ Business activity continued on the upswing well into 1937, but railroad recovery lagged; during these years many roads were declared bankrupt and others avoided receivership only by the narrowest margin. With railway funds and credit exhausted, and with the carriers occupied with problems of reorganization and the scaling down of funded debt, a process facilitated by generous loans at low interest rates by the Reconstruction Finance Corporation, consolidation activity under the Transportation Act of 1920 reached a new low.

A general paralysis seemed to have overtaken the trunk line situation following the four-party agreement in 1932. The Van Sweringens and Baltimore & Ohio systems, loaded down with previous acquisitions and staggering from the effects of the depression, were never able to expand as intended by the trunk line agreement. Of the Van Sweringen properties, only the Chesapeake & Ohio continued to earn its fixed charges; the Missouri Pacific, Chicago & Eastern Illinois and Chicago Great Western were bankrupt and Alleghany itself was sold on the block by J. P. Morgan & Co. in 1937 in default of a \$43,000,000 loan.⁹⁴ The Pennsylvania had expended about \$125,000,000 in obtaining control of the Lehigh Valley, the New Haven and the Wabash, and the latter two were in the courts after 1935. That the Pennsylvania no longer considered the four-party agreement binding was indicated by General Atterbury's offer, made in July 1933, to carry out the terms of the Prince Plan by acquiring the Baltimore & Ohio, a proposition which President Willard of the Baltimore & Ohio vigorously

⁹³ Class I carriers reported net deficits of \$139,203,821 in 1932, \$5,862,836 in 1933, and \$16,887,078 in 1934. During the next three years net earnings were reported, amounting to \$7,539,127, in 1935; \$164,630,041, in 1936; and \$98,057,740, in 1937.

⁹⁴ Control of Alleghany was sold to a syndicate headed by Young and Kirby for \$4,000,000. At a later date the Chesapeake Corporation was dissolved and Alleghany assumed direct control of the Chesapeake & Ohio and other Van Sweringen properties.

assailed.⁹⁵ The New York Central, with a heavy commitment in the Delaware, Lackawanna & Western, displayed little interest in the four-party plan after its approval, or in the recommendation of the Prince Plan that it be lumped with the Van Sweringen system. When, in June 1934, the Reconstruction Finance Corporation recommended the merger of the Chicago & Eastern Illinois with the New York Central on the grounds that it would reduce both investment and operating costs, President Williamson of the Central dismissed the suggestion with the comment: "We have all the line we want."⁹⁶

Only one combination worthy of note occurred in the East between 1933 and 1940, the acquisition of the Nickel Plate and Erie by the Chesapeake & Ohio in 1937.⁹⁷ Actually this involved merely a shift in the financial arrangements of the Van Sweringen system, according to which the Chesapeake & Ohio took over from its subsidiary, the Virginia Transportation Company, and from the Alleghany Corporation, 57 percent of the voting stock of the Nickel Plate and 55.7 percent of the Erie's voting power. In approving the application, the Commission noted that the transfer of stock would eliminate the interests of subsidiaries and bring together 72.36 percent of the mileage of the modified plan's System No. 6. However, before the Chesapeake & Ohio could take formal possession of the Erie, which had cost \$43,000,000 to acquire, the latter road was bankrupt, and in the fall of 1938 the Chesapeake & Ohio had to come to the rescue of the Nickel Plate when \$15,000,000 of that road's notes became due.

⁹⁵ *New York Times*, July 27 and 28, 1933.

⁹⁶ The Reconstruction Finance Corporation recognized the fact that the suggested grouping would conflict with the complete plan, which had allocated the "C. & E. I." to the North Western, and with the modified plan, which had given the road to the Van Sweringens, but pointed out that these plans "were promulgated prior to the development of conditions which have greatly increased the necessity for drastic economies of railroad operation." *New York Times*, June 5 and 6, 1934.

⁹⁷ Approved in *New York, Chicago & St. Louis Co. and Erie Railroad Co. Control*, 224 I. C. C. 259 (1937).

In the South the only significant development was the consolidation in 1939 of the Gulf, Mobile & Northern, the New Orleans Great Northern, and the Mobile & Ohio, into a new company, the Gulf, Mobile & Ohio.⁹⁸ In August 1938, the Reconstruction Finance Corporation expressed its willingness to loan \$9,500,000 to the Gulf, Mobile & Northern or its successor if the merger were carried through, and the Southern was persuaded to sell its holdings of Mobile & Ohio stock.⁹⁹ This arrangement was distinctly at variance with the complete plan, which had placed the Gulf, Mobile & Northern and the New Orleans Great Northern with the Atlantic Coast Line-Louisville & Nashville system and attached the Mobile & Ohio to the Chicago & North Western. However, the merger had distinct operating advantages, and after a succession of purchases and leases, a combined system was created operating 1,724 miles of road between the Ohio River and the Gulf of Mexico.

By and large, attempts at consolidation in the Southwest from 1933 to 1940 were as unsatisfactory and unsuccessful as they were in other parts of the country. Early in 1934 there were reports that in return for help from the Reconstruction Finance Corporation, the management of the Denver & Rio Grande Western was promoting a plan to merge the Rio Grande with the Western Pacific into a corporation to be controlled jointly by the Missouri Pacific and the Burlington.¹⁰⁰ However, this proposal ran into a snag when the Van Sweringen interests could not come to an agreement with the Arthur Curtis James group on the fiscal policies of the Rio Grande and the terms under which the new corporation should be operated. The James group was said to be insisting on traffic rights over the Missouri Pacific; the Van Sweringens were reported unwilling to grant these rights and feared, moreover, that the Burlington (controlled by the Hill-James interests) would grab the "C. &

⁹⁸ *Gulf, Mobile & Ohio R. R. Co. Merger*, 236 I. C. C. 61 (1939).

⁹⁹ *Traffic World*, August 20, 1938.

¹⁰⁰ *New York Times*, February 2, 1934.

E. I." from them during the latter's reorganization. The upshot was that the merger idea was dropped and a limited reorganization and consolidation plan confined to the Rio Grande was pushed through in 1936.¹⁰¹

In August 1935 there was a flurry of excitement when it was announced that a plan calling for the reorganization of three bankrupt western roads into a system of 15,000 miles was to be placed before the Commission.¹⁰² This plan, suggested by a stockholders' committee and filed under the Bankruptcy Act of 1935,¹⁰³ proposed simultaneous reorganization and merger of the Rock Island, the Frisco and the Chicago & Eastern Illinois. However, the plan ran into opposition from bondholders who had the upper hand in Rock Island affairs, from the Chicago & Eastern Illinois trustee who was operating under a different plan of reorganization, and was adjudged "prima facie impracticable" by the Commission in 1935.¹⁰⁴

On December 2, 1935, the creation of a vast southwest railway empire dominated by the Missouri Pacific, and including also the Frisco and the Katy, was proposed in the report of an examiner for the Reconstruction Finance Corporation.¹⁰⁵ Complete consolidation of the Gulf Coast Lines with the International-Great Northern and of the Texas & Pacific with the

101 *Commercial and Financial Chronicle*, August 1 and 15, 1936.

102 *New York Times*, August 30 and 31, 1935.

103 In 1933 Congress added Section 77 to the Bankruptcy Act of 1898 as a means of expediting the financial reorganization of railroads. This section was further amended in 1935.

One of the purposes of the new law was to insure that the management of the carrier during receivership would be in the interest of all parties concerned by authorizing the appointment of one or more trustees to operate the properties after a finding of bankruptcy. Another was to give the Commission power to participate at all stages in the formulation of the reorganization plan.

104 *Chicago, Rock Island & Pacific Ry. Co. Reorganization*, 212 I. C. C. 89 (1935). The Commission held that the consolidation issue would interfere with and delay reorganization proceedings.

105 *Wall Street Journal*, December 3, 1935.

Missouri Pacific was also recommended. The report listed three outstanding difficulties in the way of rehabilitating the Missouri Pacific (which then owed more than \$23,000,000 to the RFC): (1) the lack of a direct line between Kansas City and important Texas centers, (2) insufficient penetration into Oklahoma, and (3) inferior routes between Kansas City and Memphis and St. Louis and Memphis. The report claimed that all these handicaps would be removed by the consolidation, adding that the system so produced would be much stronger than any of the three systems in their separate state. This recommendation, however, was never acted upon by the Missouri Pacific.

The list of unifications carried out in the Southwest from 1933 to 1940 narrows down to the acquisition of the Louisiana & Arkansas and the Louisiana, Arkansas & Texas by the Kansas City Southern in 1939, and a unification of subsidiaries by the Southern Pacific accomplished a few years earlier. Incidentally the acquisition made by the Kansas City Southern required a modification of the complete plan, which had placed the Louisiana & Arkansas in the Rock Island-Frisco system and the Kansas City Southern with the Union Pacific.¹⁰⁶ The Southern Pacific unification was one of two cases involving the knitting together of subsidiaries which came before the Commission soon after passage of the Emergency Act of 1933. In the first, the Rock Island and 11 of its subsidiaries asked for approval to form a single company, so that corporate fees and expenses might be reduced and the new company secure its bonds by direct lien on all its properties. The Commission approved this unification of 7,621 miles of line, but on the condition that the Rock Island take over a short line, the Wichita Northwestern.¹⁰⁷ However, this condition proved unacceptable to the Rock Island, and the proceeding was subsequently dismissed with consent of applicants. In the second case, the Texas

¹⁰⁶ *Louisiana & Arkansas Railway Co. Control*, 233 I. C. C. 123 (1939).

¹⁰⁷ *Rock Island System Consolidation*, 193 I. C. C. 395 (1934).

and Louisiana lines of the Southern Pacific (the Texas & New Orleans) asked permission to unify some 4,514 miles of line. The Commission granted its approval on the grounds that the unification would reduce the applicant's expenses and improve its credit, but required the inclusion of the Fredericksburg & Northern, a short line in southwest Texas.¹⁰⁸ This time the condition was met and the unification consummated.

In other areas west of the Mississippi results were equally disappointing. Only two minor consolidations occurred in central western and northwestern traffic territories between 1933 and 1940, and one of these was in reality a terminal unification,¹⁰⁹ although it involved 461 miles of line in the St. Louis area. The other was a consolidation of several Minnesota ore roads entirely owned by the United States Steel Corporation. In this instance the Duluth, Missabe & Northern and the Spirit Lake Transfer Company united to form the Duluth, Missabe & Iron Range.¹¹⁰ Shortly after this event, the Duluth, Missabe & Iron Range applied for authority to purchase control of the Duluth & Iron Range, which it already leased. Applicant contended that the plan would decrease fixed charges, taxes and accounting, and would provide unity of control of properties previously operated through lease arrangements. These arguments found favor with the Commission, which dismissed the contention of state authorities that the plan would reduce tax receipts.¹¹¹

In October 1937 protective committees for holders of common stock of the Chicago & North Western and the Chicago, Milwaukee, St. Paul & Pacific urged that the two roads be

¹⁰⁸ *Southern Pacific (Texas and Louisiana Lines) Consolidation*, 199 I. C. C. 47 (1934).

¹⁰⁹ *Illinois Terminal Railroad Company Consolidation, Acquisition, and Securities*, 224 I. C. C. 36 (1937).

¹¹⁰ *Duluth, Missabe & Northern Ry. Co. et al. Consolidation*, 221 I. C. C. 539 (1937).

¹¹¹ *Duluth, Missabe & Iron Range Ry. Co. et al. Merger*, 224 I. C. C. 641 (1938).

merged so as to reduce yearly operating costs by an estimated \$10,000,000 and avoid threatened elimination of the stockholders' interests. This suggestion made in connection with reorganization proceedings affecting the two bankrupt carriers was encouraged by the Reconstruction Finance Corporation and supported by H. A. Scandrett, trustee of the Milwaukee.¹¹² However, committees representing banks and life insurance companies with large bond holdings in the two rail companies opposed the merger, and the proposal was finally turned down by the Interstate Commerce Commission on the grounds that it would require extensive study and hearings and would "too long delay this determination and the enforcement of the rights of creditors."¹¹³

An unusual application came before the Commission in 1935, one which involved the acquisition of a Class I carrier by eight other railroads.¹¹⁴ In this case the Associated Railways Company sought authority to acquire the properties of the Minneapolis & St. Louis, to abandon one-third of its mileage, and to distribute the remainder among eight companies, the Burlington, North Western, Great Western, Milwaukee, Rock Island, Great Northern, Illinois Central and the Soo Lines. The application also involved a modification of the Commission's final plan, which had assigned the Minneapolis & St. Louis to the Illinois Central. Notorious as a "weak sister" among railroads, the Minneapolis & St. Louis had been in receivership since 1923. In 1934 consideration of a loan to this carrier led the Reconstruction Finance Corporation to recommend that it be split among the other railroads in the region and its most unprofitable mileage abandoned. Applicants presented testimony to show that the Minneapolis & St. Louis could not continue in operation as an independent road, that it was starving for traffic

¹¹² *Traffic World*, October 16, 1937, and March 26, 1938.

¹¹³ *Chicago & North Western Railway Company Reorganization*, 230 I. C. C. 548 (1939).

¹¹⁴ *Associated Railways Co. et al. Acquisition, Abandonment, and Securities*, 228 I. C. C. 277 (1938).

in an area already well-supplied with rail lines and that long stretches of its track did not produce so much as a single car of freight a day. Because of its light traffic and locomotives, its heavy grades and curves, applicants argued that that Minneapolis & St. Louis could not easily reduce its operating expenses and would eventually have to abandon much of its existing mileage.

At the hearings, railroad labor opposed the application on the grounds that the plan contemplated the discharge of approximately 2,000 workers, two-thirds of the labor force of the Minneapolis & St. Louis. Even more strenuous opposition came from farmers, merchants, grain, coal and lumber dealers, manufacturers, state commissions, civic interests and other groups desiring to maintain the status quo of the Minneapolis & St. Louis. Intervenor contended that the depression was responsible for the plight of the railroad and that the location of new industries on its line and a revival of agriculture in the region as planned by the federal government would permit the road to earn a living.

In a decision handed down June 13, 1938,¹¹⁵ the Commission denied the application on the following grounds: (1) Abandonment would deny service to 20 towns and villages with a population of 2,854 and destroy the businesses of grain and coal dealers and their investments in bins, elevators and other facilities; (2) Existing routes and channels of commerce would be disrupted; (3) Competition would be eliminated at a number of points; (4) Some 2,000 employees would face dismissal; (5) The application did not accord with the final plan. Although he considered the proposal to be in the public interest, Commissioner Eastman concurred in the decision because he believed the creditors of the Minneapolis & St. Louis should have an

¹¹⁵ The Reconstruction Finance Corporation recommended the acquisition and abandonment in 1934, the eight railroads involved got together and submitted their application within six months, but it was three years before the Commission handed down a decision on the case.

additional opportunity to work out a plan to safeguard their interests before dismemberment was attempted.¹¹⁶

In a singularly forceful dissent, Commissioner Meyer warned that dismissal of the application only postponed the day of reckoning for the Minneapolis & St. Louis. Nor did the Commissioner consider this situation unique:¹¹⁷

Barring basic changes in the status of our railroads, the country as a whole probably faces the greatest railroad-salvaging operation of all time. The case of the Minneapolis & St. Louis is only one of many.

Commissioner Meyer pointed to the growth of highway transportation and the fact that many communities had already decided against the railroads so far as a large part of their transportation was concerned. Where they had chosen to give their business to the highways instead of the railroads, the Commissioner argued, they must be prepared to take the consequences of their choice, and permit the abandonment of unprofitable railroad mileage even though this meant a loss for certain industries located on the line. Concluded the Commissioner: "It is only by authorizing abandonments where public gains outweigh private losses that the most essential railroad mileage of the country can be preserved."

END OF THE CONSOLIDATION PLAN — THE TRANSPORTATION ACT OF 1940

In the late 1930's more and more attention came to be focused on what was termed "the railroad problem." According to a report of the Interstate Commerce Commission,¹¹⁸ this problem was directly associated with railroad poverty, and its symptoms were bankruptcy, federal loans, low employment, abandonment of facilities, and curtailment of maintenance and new equipment. Causes of railroad distress, apart from the de-

¹¹⁶ 228 I. C. C. 277, 375-376.

¹¹⁷ *Ibid.*, pp. 376-379.

¹¹⁸ *Annual Report of the Interstate Commerce Commission*, 1938, pp. 2, 3.

pression, were given by the Commission as (1) competition of other carriers, (2) the great volume of indebtedness and (3) financial exploitation.

The railroad problem was brought to a head when a business "recession" starting in the latter half of 1937 cut severely into railroad traffic and revenues and produced a new crop of failures. During 1937 there was a net addition of 18 to the number of roads in the hands of courts, and the total mileage operated by receivers and trustees stood at 70,884 miles at the end of the year.¹¹⁹ Among the bankrupt properties were such prominent carriers as the Missouri Pacific, the Denver & Rio Grande Western, the Western Pacific, the Rock Island, the Frisco, the North Western, the Great Western, the Milwaukee and the New Haven. In January 1938, the Erie Railroad and the Soo Lines were declared insolvent, bringing the total mileage operated by receivers and trustees to more than a third of the Nation's rail network.

At a press conference, December 10, 1937, President Roosevelt admitted he was greatly concerned over the plight of the railroads and, referring to a discussion of the railroad problem made by Commissioner Eastman in 1933 and 1934, expressed the feeling that the country was not much closer to a solution of the problem at the end of 1937 than it had been when the Coordinator's reports were issued.¹²⁰ The annual report of the Interstate Commerce Commission which appeared at about this time focused attention on the failure of many important carriers to earn their fixed charges and emphasized the point that it did not regard the rate increases demanded by the carriers, which it was estimated would boost freight revenues by more than \$500,000,000, as a means of curing the basic ills of the railroads.¹²¹ Echoing this viewpoint, Senator Wheeler, Chairman

¹¹⁹ Interstate Commerce Commission, *Statistics of Steam Railways of the U. S.*, 1937.

¹²⁰ *Railway Age*, CIII, p. 887.

¹²¹ *Annual Report of the Interstate Commerce Commission*, 1937, pp. 7-11. The Commission stated: "No competitive industry can work out its salva-

of the Senate Committee on Interstate Commerce, stated that the situation of the railroads was such as to require "drastic and large-scale legislation."¹²²

What lines this legislation might take was indicated early in 1938, when it was announced that the one solution which the President, certain members of the Interstate Commerce Commission and Senator Wheeler had endorsed in common was the elimination of railroad competition.¹²³ Such a course of action was known to be favored in other influential quarters. Spokesmen for bankers and investors had repeatedly emphasized the need for reducing costs through consolidation.¹²⁴ In opposing the rate increases sought by the railroads, John Benton, general solicitor of the National Association of Railroad and Utility Executives, advocated a consolidation program, stating that: ¹²⁵

tion through a price-increasing policy alone, and the railroad industry is now, to a very considerable extent, in that class. While price increases are at times necessary, the vital thing in competition is to increase the salability of the product and reduce its cost. . . . We have repeatedly expressed in our reports the belief that by greater cooperation with each other and the coordination of many of their facilities and operations, further and material reductions in operating expenses are feasible."

122 See speech by Senator Wheeler before the Washington Transportation Club, February 8, 1938, reported in *The Railroad Trainman*, April 1938.

123 *New York Times*, February 5, 1938.

124 Mr. Henry Bruere, President of the Bowery Savings Bank, stated in a speech before the Associated Traffic Clubs in New York, April 20, 1937, that the life insurance companies and mutual savings banks would make no further substantial investments in railroads until basic difficulties were overcome. *Traffic World*, April 24, 1937.

125 Hearings before the Interstate Commerce Commission on the *Fifteen Percent Case* (Ex parte 123), XXXVI, 6082, February 1, 1938. Mr. Benton condemned governmental "favors" to the railroads, listing government largesse during the war, government loans after the war, 720 millions in excess rates from the rate payers under Section 15a, surcharges in Ex parte 113 in 1931, continuance of these surcharges in 1933, Ex parte 115 Emergency Surcharges in 1935, to end in 1936, extension of these surcharges until 1937; permanent increases in Ex parte 115 in October 1937, in rates of important commodities. These, he said, had all been tried, and the railroads were in a worse position than they had been 20 years previously.

For 20 years the people of this country have poured out money from the public treasury, or have assessed excess transportation charges upon themselves, to enable these carriers to continue in wasteful competition with each other, when but for these governmental favors the railroads would long ago have been forced to consolidate and to bring their operations into conformity with economic laws.

How far the country ought to go in eliminating competition among railroads and in bringing about consolidations was still the subject of debate. Reports circulated that federal authorities were considering the creation of a new agency to manage the railroads, with power to enforce consolidations if the railroads failed to take action voluntarily within a three-year period.¹²⁶ One plan advocated by two members of the Interstate Commerce Commission called for consolidation of all domestic railroads into a single system for ownership and operation under private management.¹²⁷ It was also suggested that the Prince Plan might be revived, or a new Coordinator appointed to promote, or compel, action on individual consolidation projects. The *Traffic World* reported that some railroad executives were leaning in the direction of compulsory consolidation, and added:¹²⁸

We have always opposed compulsory consolidation, but our opposition has been largely on the ground that the railroads ought to have their chance to bring about voluntary consolidation in a natural way. Well, they have had that chance;

¹²⁶ *New York Times*, February 21, 1938.

¹²⁷ "A Suggestive Plan for the Solution of the Railroad Problem" and "Consolidation of the Rail Transportation Facilities of the United States Into a Single System for Ownership and Operation Under Private Management," memoranda by Commissioner Miller (in collaboration with Commissioner Caskie), transmitted to the Senate Committee on Interstate Commerce, April 13, 1938. The plan had previously been presented by Commissioner Miller at the annual meeting of the National Association of Railroad and Utility Commissioners at Salt Lake City, August 31, 1937. See *Railway Age*, September 4, 1937.

¹²⁸ *Traffic World*, September 11, 1937.

they have profited nothing by it; perhaps the time has come to advocate compulsory consolidation.

However, the main body of opinion among the executives appeared to be against a revived consolidation plan. Judge R. V. Fletcher, general counsel for the Association of American Railroads, argued that consolidations were being retarded by the Commission's plan which had been drawn according to "obsolete standards" of the Act of 1920 requiring the maintenance of competition and preservation of existing trade channels.¹²⁹ M. J. Gormley, an executive officer of the Association, criticized the Prince Plan and predicted that economies realizable under any "practical" system of consolidation would be very small.¹³⁰ Editorially, the *Railway Age* asserted that mergers and reorganizations were palliatives, not remedies, for the railroad problem, and claimed that the outstanding phenomenon which required investigation was "the failure of railway traffic to expand in anything like the volume that might reasonably have been expected."¹³¹

On March 8, 1938, the Interstate Commerce Commission granted increases averaging 5 percent on railroad freight rates.¹³² Immediately, President Roosevelt called representatives of railroad management and labor, security holders and federal officials, to meet in Washington and map out a program to deal with fundamental aspects of the railroad problem. Meetings were held by this group¹³³ at the White House,

129 R. V. Fletcher, Address before the Second Annual Joint Meeting of the Reading Traffic Club and the Reading Chamber of Commerce, Reading, Pennsylvania, November 26, 1935. Copy in Bureau of Railway Economics Library, Transportation Building, Washington, D. C.

130 Speech before the Rotary Club of Western Massachusetts and New England Shippers Advisory Board, March 25, 1938. Copy in Bureau of Railway Economics Library, Transportation Building, Washington, D. C.

131 *Railway Age*, February 19, 1938.

132 *Fifteen Percent Case*, 1937-1938 (Ex parte 123), 226 I. C. C. 41.

133 Present were Commissioners Eastman, Mahaffie and Splawn, Senators Wheeler and Truman, Chairman Lea of the House Interstate Commerce

March 15 and 17, 1938. At the conclusion of the first day of meeting, President Roosevelt announced that the federal government might compel consolidations as a way out of the carriers' predicament.¹³⁴ If this were done, he said, some protection would have to be given to the employees displaced as a result. Following the second day of conferences, however, there were indications that the parties were less favorably disposed towards compulsory consolidation, and were paying more attention to the possibilities of economies attainable through coordination and pooling arrangements. Commissioner Splawn said that one well-known authority on the subject had stated that while up to \$250,000,000 might be saved through enforced consolidations, 70 cents out of every dollar saved would come from reduction of payments to labor and the remainder from lower operating expenditures. According to this authority, presumed to be Carl Gray, vice-president of the Union Pacific,¹³⁵ an exercise of powers practically equivalent to the government's taking over the railroads would be necessary to attain the maximum results in any system of compulsory consolidation. Mr. Splawn added that such a plan would run counter to the interests of many communities, markets, managements and workers, each of which could be expected to be heard from.

After the adjournment of these discussions, President Roosevelt appointed a committee consisting of Commissioners Eastman, Mahaffie and Splawn—later referred to as the Com-

Committee, Secretary of Commerce Jones, Secretary of the Treasury Morgenthau, Henry Bruere, President of the Bowery Savings Bank, Carl Gray, President of the Union Pacific, George Harrison, Chairman of the Railway Labor Executives Association, W. O. Douglas, Chairman of the Securities Exchange Commission.

¹³⁴ *Washington Post*, March 16, 1938.

¹³⁵ Mr. Gray was mentioned as the authority by the *New York Times*, March 18, 1938. As vice-president of the powerful Union Pacific Railroad, which never missed a dividend payment throughout the 1930's, Mr. Gray could afford to take a more independent attitude on the subject of consolidation than most railway executives.

mittee of Three—and asked them to report on the railroad situation, incorporating in their remarks recommendations for new railroad legislation. This report was transmitted to Congress, April 11, 1938, by the President, who called the attention of the legislators to the “increasingly difficult problem of our railroad transportation” and asked for speedy action on new legislation.¹³⁶ The report of the Committee of Three suggested that Congress take action along the following lines:

(1) Establishment of a Federal Transportation Authority for two years to plan and promote carrier action to eliminate waste, and aid consolidation and coordination.

(2) Investigation by the Authority of economy in all types of transportation, the encouragement of special fitness and the reduction of destructive competition.

(3) Enactment of measures designed to eliminate railroad financial abuses being studied by Congress.

(4) Amendment of the Interstate Commerce Act so as to broaden the powers of the Commission with respect to pooling of earnings and traffic, and to eliminate the consolidation plan.

Despite the President's plea for immediate legislative action to bring relief to the railroads, Congress failed to set the necessary wheels in motion before the convening of the Seventy-Sixth Congress in December 1938. In the meantime, Mr. Roosevelt had conferred with representatives of shippers, railway management and labor, and had appointed a Committee of Six composed of three railway executives and three representatives of the railway labor brotherhoods,¹³⁷ and asked them to submit recommendations upon the general transportation situation. The report of the Committee of Six, published on

¹³⁶ “Immediate Relief for Railroads,” Message of the President of the United States. House Document 583 (75th Cong., 3rd Sess.), 1938.

¹³⁷ Railroad management was represented by Carl Gray of the Union Pacific, E. E. Norris of the Southern, M. W. Clement of the Pennsylvania; railroad labor by George Harrison of the Railway Labor Executives Association, B. M. Jewell of the Railway Employees, American Federation of Labor, and D. B. Robertson of the Locomotive Firemen and Enginemen.

December 23, 1938, covered the entire transportation field and made far-reaching suggestions to provide for equalization of treatment of transport agencies, including the following.

(1) Adoption by the government of a definite national transportation policy providing for fair, impartial regulation of all modes of transportation.

(2) Regulation by the Commission of rates, services, valuation, and accounting as to all modes of transportation.

(3) Creation of a new and independent Transportation Board to survey and report to Congress on the relative economy and fitness of the several modes of transportation and the extent of subsidies; to supervise new construction, operations or abandonments; to regulate the issuance of securities, consolidations, mergers, leases, acquisitions of control, interlocking directorates, etc.

Significantly, the report relegated to a minor position the subject of railroad consolidation which had occupied a prominent place in the recommendations of the Committee of Three. It was the conclusion of the Committee of Six that the provisions of the Act making the Commission responsible for a general plan of consolidation should be repealed, and initiative of action restored to the carriers. Applications should be submitted to the Transportation Board, which, in passing upon each case, should consider the public interest and the interests of the employees affected. Action beyond these limits was not recommended by the Committee.

A bill ¹³⁸ based largely upon the report of the Committee of Six was introduced in Congress by Chairman Lea of the House Committee on Interstate and Foreign Commerce, and hearings on the bill were held by that Committee from January 24 to March 30, 1939. There seemed to be general agreement among witnesses at the hearings that the requirement that consolidation follow a general plan should be repealed. Discussing the

138 H. R. 2531 (76th Cong., 1st Sess.), 1939.

Commission's attitude towards its own consolidation plan, Commissioner Eastman stated:¹³⁹

The Commission has got out such a plan and has made various amendments to it, but comparatively little has been done under it. . . .

Away back in 1926 the Commission recommended to Congress that the provisions with respect to the consolidation plan be eliminated, and expressed the opinion that better results could be accomplished if the process of consolidation were allowed to take its natural and normal course, subject to full supervision by the Commission. . . .

We have been in favor of that, the elimination of the consolidation plan for a long time. We think the plan serves no really useful purpose. Conditions are changing all the time. Once you make a consolidation plan which conforms to the specifications as near as may be, conditions may change within a year so it will no longer conform to these specifications.

Although witnesses joined in urging abandonment of the consolidation plan, there was considerable difference of opinion as to what ought to take its place. The Lea Bill proposed the creation of a Transportation Administrator who should undertake to "strengthen the transportation system in the most effective way with a minimum of destructive competition"; if, after study, the Administrator felt that some form of compulsory consolidation was necessary to carry out his duties, he was to so inform Congress and draw up legislation necessary to accomplish consolidations. This section of the Lea Bill was vigorously opposed by railroad management and labor alike. Mr. Carl Gray, vice-president of the Union Pacific and a member of the Committee of Six, thought the initiative in consol-

¹³⁹ Hearings on H. R. 2531, pp. 1714-1715. On January 28, 1939, Commissioner Eastman stated he thought some government "propulsion or compulsion" necessary to achieve consolidation. *New York Times*, January 29, 1939.

idations should be left with the carriers, subject to the approval of a regulatory body which, in passing upon each proposal, should merely consider the effect upon adequate transportation service, upon weak lines in the territory, upon the total fixed charges, and, lastly, upon the interests of the employees affected.¹⁴⁰ This point of view received the support of the Association of American Railroads, the American Short Line Railway Association, the National Industrial Traffic League, and railway labor.¹⁴¹ Mr. George Harrison, Chairman of the Railway Labor Executives Association and a member of the Committee of Six, although he recognized the value of economies achieved through consolidation, thought they should not be carried out at the expense of labor. On the other hand, Mr. Tom McGrath, counsel for the Brotherhood of Railway Trainmen, sided with Mr. Gray in discounting the savings of consolidation, and argued that railroad integration would not produce hoped-for reductions in rates, or improvements in earnings and service.

Challenging this point of view, several witnesses, among them representatives of security holders, testified that the proposals of the Committee of Six did not go far enough to secure economies in railroad operation. Mr. Leslie Craven presented the attitude of the Railroad Security Owners Association on this subject:¹⁴²

The Committee of Six represents simply the hired men. Some of them get more money than others, but they are all employees; that is, the management and labor. And it is quite

¹⁴⁰ Hearings on H. R. 2531, pp. 163-164. Mr. Gray had assumed the role of the leading antagonist of compulsory and large-scale consolidation. See his criticism of Commissioner Eastman's statement on compulsion, *New York Times*, February 2, 1939.

¹⁴¹ Testimony of witnesses for the Association of American Railroads, Hearings on H. R. 2531, pp. 671-680; for the American Short Line Railway Association, p. 1355; for the National Industrial Traffic League, p. 1451; Railway Labor, pp. 213-216, 1282-1287.

¹⁴² Hearings on H. R. 2531, p. 1634.

natural that they should look at this from their standpoint. No one on the Committee of Six represented the investors or creditors. Many of the suggestions of the committee are excellent and, insofar as we can, we believe in supporting the proposals which they have earnestly recommended for the stabilizing of this business. We do not, however, think that they have gone far enough. They propose nothing designed to reduce the excessive operating costs due to unnecessary competition and duplication of facilities.

The Railroad Security Owners Association contended that consolidations "should be in the nature of transcontinental lines from the Atlantic to the Pacific, and from the Canadian border to the Gulf, rather than by regions."¹⁴³ Mr. L. A. Jenny, railroad consulting engineer, representing the Northern Railroad of New Jersey and the North Jersey Transit Committee, expressed his conviction of the "hopelessness of entrusting the problem of consolidation to the railroads alone as is proposed" and urged consolidation of the carriers into a single system or, as an alternative, into six regional systems.¹⁴⁴

Despite these criticisms, the bill which Congress finally passed in May 1940, and which became the Transportation Act of 1940,¹⁴⁵ followed closely the recommendations of the Committee of Six. It utterly repudiated the idea of a comprehensive

¹⁴³ Hearings on H. R. 2531, p. 534.

¹⁴⁴ *Ibid.*, pp. 1325-1327. In 1938, Mr. Jenny published a pamphlet supporting a six-system regional plan which, he estimated, would result in savings of half a billion dollars annually. However, in his testimony on the Omnibus Bill in 1939, Mr. Jenny stated: "I believe it is safe to say that with one national system the annual savings may be between \$750,000,000 and \$1,000,000,000, whereas with the regional plan which I have suggested, they may be approximately \$500,000,000."

¹⁴⁵ Although Senate hearings on the revised bill were completed by the middle of April 1939, basic differences between the Senate and the House measures, particularly as related to the regulation of water carriers, prevented action on the bill before the summer recess. A compromise was finally reached in the spring of 1940, and the Transportation Act issued (54 U. S. Statutes 898).

and planned system of consolidations. The last vestige of the consolidation program contemplated by the Transportation Act of 1920 was destroyed when Congress eliminated the Commission's complete plan. Under the new act, every proposal to purchase, lease, merge, consolidate, or otherwise acquire control of rail properties was to be examined on its own merits, in the light of certain considerations specified by Congress,¹⁴⁶ without reference to a general plan of consolidation. Congress accepted the contention that the Commission's plan was no longer a guide, but rather a deterrent to consolidation.

Moreover, the Act of 1940 failed to substitute any new machinery designed to bring about systematic and large-scale consolidations. Instead, Congress shunted the whole subject of consolidation and coordination off to be studied by a Board of Investigation and Research whose primary function, however, was to investigate and report on the relative economy and fitness of the carriers and the degree to which each was subsidized.¹⁴⁷ The Act of 1940 ignored the reports and recommendations of the Federal Coordinator with regard to consolidation; at a hearing on the final bill Mr. Eastman pointed out that the measure failed to provide any assistance in the integration of transport facilities.¹⁴⁸ It ignored, too, the recommendations in

¹⁴⁶ These considerations were four in number: (1) The effect of the proposed transaction upon adequate transportation service to the public; (2) the effect upon the public interest of the inclusion, or failure to include, other railroads in the territory involved in the proposed transaction; (3) the total fixed charges resulting from the proposed transaction if it were carried out; and (4) the interest of the carrier employees affected. These were the conditions suggested by the Committee of Six.

¹⁴⁷ In 1941 the Board of Investigation and Research undertook to study the subject of interterritorial freight rates. Up to January 1946, the Board had not issued a report on consolidation.

¹⁴⁸ "Senator Shipstead. Mr. Eastman, I have been very much interested in many statements you have made about the transportation industry. I notice you have repeatedly from time to time stated that a great harm was done to the railroad industry by lack of integration of transportation facilities, operating waste, and also through financial transactions which have been to

support of consolidations made by the Committee of Three and similar recommendations contained in the annual reports of the Interstate Commerce Commission for 1938 and 1939.¹⁴⁹ The carriers and railway labor had won their case. Planned consolidation had been dropped from the statute books.

the detriment of the railroads. Under this bill would we give you any added authority to eliminate that waste and so help the financial condition of the railroads?

"Commissioner Eastman. No; my understanding is that this bill does not go into those matters, with the exception that it would open up the door a little wider than it is now open to railroad consolidations, which might well have the effect of eliminating some of the waste." Hearings on S. 2009 before the Senate Committee on Interstate Commerce (76th Cong., 1st Sess.), 1939, p. 767.

¹⁴⁹ *Annual Reports of the Interstate Commerce Commission*, 1938, pp. 14-17; 1939, pp. 14-16.

CHAPTER VIII

THE FAILURE OF CONSOLIDATION UNDER THE TRANSPORTATION ACT OF 1920

THE EVIDENCE

ALTHOUGH Congress waited until 1940 to pronounce the official death of the consolidation plan which the Commission had adopted pursuant to the provisions of the Transportation Act of 1920, actually this plan had never been a living guide to railroad combination. Not a single consolidated system proposed in the complete plan of 1929, or in the modified plan of 1932, was ever brought into being; and neither at the time of its birth nor at the time of its extinction did the consolidation plan correspond to the actualities of railroad control. Moreover, since the Commission repeatedly modified its complete plan to suit the convenience of carriers applying under Section 5 of the Act, whatever significance the plan may have had at the time of its promulgation was soon destroyed.

This does not mean that no consolidations at all were carried out during the twenty years of the Transportation Act. It means only that no consolidations were carried out by plan as intended in that Act. The record of the 1920's reveals a single consolidation, the Nickel Plate Unification of 1923, engineered by the Van Sweringens, in which the Clover Leaf, the Lake Erie & Western and the Nickel Plate participated.¹ Since this transaction, however, was accomplished under state law and merely left undisturbed by the Commission, it cannot properly be regarded as an accomplishment of the Transportation Act. On the other hand, three consolidations were approved by the Commission during the 1930's. Only one of these, however,

¹ *Operation of Lines and Issue of Capital Stock by the New York, Chicago & St. Louis R. R. Co.*, 79 I. C. C. 581 (1923).

the Gulf, Mobile & Ohio, formed in 1938 from the Gulf, Mobile & Northern, the Mobile & Ohio and the New Orleans Great Northern, involved any significant amount of mileage, and this action required for its approval a modification of the Commission's plan.²

The dearth of consolidations during the 1920's has a legal explanation: the Commission ruled that consolidation of properties into a single system for ownership and operation could not be authorized until after publication of its complete plan.³ Consequently, in order to merge, the railroads were compelled to seek the authority granted in Section 5(2) of the Act to acquire control of rail properties by lease, merger, or other means falling short of complete consolidation, and a large number of such unifications were carried out.⁴ This, in effect, represented a miscarriage of the statute, which had been put on the books with the intent of supplanting the partial union involved in unification with the absolute integration of companies brought about by consolidation. The anomalous situation thus presented led President Willard of the Baltimore & Ohio to remark shortly before issuance of the complete plan that—

Unification was devised to serve as the temporary entrance hall to the temple of consolidation, and the same dispensations were to be bestowed in the entrance hall as in the temple itself. The result has been that the entrance hall has been crowded with supplicants, and the foundations of the temple are still literally up in the air!

2 *Gulf, Mobile & Ohio R. R. Co. Merger*, 236 I. C. C. 61 (1939).

3 *Control of Big Four by New York Central*, 72 I. C. C. 96 (1922).

4 Under Section 5(6) of the Transportation Act of 1920, no consolidation undertaken by the carriers could be approved unless it harmonized with the Commission's plan and unless the value of the securities of the new consolidated company did not exceed the aggregate value of the constituent properties as determined by the Commission. The latter requirement was repealed in 1933.

It is very much as though the legislature, in drafting a code to govern family relations, had, through some regrettable mistake, put a legal premium upon "companionate marriage."⁵

In a large number of cases, however, only a shadowy distinction between unifications and consolidations may be drawn. Many acquisitions of control approved under Section 5(2) of the Transportation Act were carried out by means of long-term leases accompanied by complete or nearly complete stock ownership and achieved results which Commissioner Eastman termed "as permanent and final as would be accomplished by a technical consolidation."⁶ Outwardly the companies involved in these transactions maintained separate corporate existence; in practice, the properties were operated as a unit.

A review of the acquisitions, unifications and other combinations effected under the Transportation Act indicates that a considerable number of important carriers were absorbed by other roads, including the following:⁷

Alabama & Vicksburg	Gulf & Ship Island
Ann Arbor	International-Great Northern
Atlanta, Birmingham & Coast	Kansas City, Mexico & Orient
Buffalo, Rochester & Pittsburgh	Louisiana & Arkansas
Buffalo & Susquehanna	Louisiana Railway & Navigation Co.
Carolina, Clinchfield & Ohio	New Orleans Great Northern
Central Pacific	New Orleans, Texas & Mexico
Chicago & Alton	Northwestern Pacific
Chicago, Terre Haute & Southeastern	Pere Marquette
Cincinnati, Indianapolis & Western	St. Louis Southwestern
Denver & Salt Lake	San Antonio & Aransas Pass
Denver & Rio Grande Western	San Antonio, Uvalde & Gulf
El Paso & Southwestern	Texas & Pacific
Georgia, Florida & Alabama	Vicksburg, Shreveport & Gulf

⁵ "Status of Railroad Consolidation," speech by Daniel Willard before the Academy of Political Science, *Proceedings of Academy of Political Science*, CXIII, 113 (1929).

⁶ Testimony of Commissioner Eastman on S. 1870 before the Senate Committee on Interstate Commerce (69th Cong., 1st Sess.), 1926, p. 50.

⁷ Only five of these roads had been controlled by other carriers prior to 1920, the Central Pacific, the Denver & Rio Grande Western, the Northwestern Pacific, the Texas & Pacific, and the International-Great Northern.

In addition to the above acquisitions, the period from 1920 to 1940 produced the following mergers or consolidations:

New York, Chicago & St. Louis Lake Erie & Western Toledo, St. Louis & Western	Consolidated into the New York, Chicago & St. Louis
Duluth, Missabe & Northern Spirit Lake Transfer Railway Duluth & Iron Range Interstate Transfer	Consolidated into the Duluth, Missabe & Iron Range
Gulf, Mobile & Northern New Orleans Great Northern Mobile & Ohio	Consolidated into the Gulf, Mobile & Ohio
Illinois Terminal Railway Company and six other companies	Consolidated into the Illinois Terminal Co.

Besides the foregoing acquisitions and consolidations, a large number of major railroads utilized Section 5 of the Act to tighten control of various segments of their systems. This process involved the elimination of subsidiary corporations, enabling the parent companies to reduce fees, taxes, accounting, and other overhead expenses. The Pennsylvania, the New York Central, the Union Pacific and the Southern Pacific achieved greater integration of their holdings in this manner. A further method of extending control under the Act was the taking over of new rail lines built by companies which had been financed by the applicant. This device was frequently employed by the Santa Fe and occasionally by the Southern Pacific.

That a considerable change occurred in the distribution of railway mileage among operating companies between 1920 and 1940 as clearly indicated in the following table:⁸

⁸ Interstate Commerce Commission, *Statistics of Steam Railways of the United States, 1920 and 1940*.

RAILROAD COMPANIES IN THE U. S., 1920 AND 1940
CLASSIFIED ACCORDING TO MILES OF ROAD OPERATED

<i>Miles Operated</i>	<i>1920</i>			<i>1940</i>		
	<i>Number of Companies</i>	<i>Mileage</i>	<i>Percent</i>	<i>Number of Companies</i>	<i>Mileage</i>	<i>Percent</i>
10,000 and over	1	10,620	4.0	4	45,452	18.4
9,000 - 10,000	1	9,390	3.6	1	9,892	4.0
8,000 - 9,000	3	25,403	9.7	4	33,950	13.7
7,000 - 8,000	4	29,404	11.2	2	15,046	6.1
6,000 - 7,000	3	19,858	7.6	3	19,688	8.0
5,000 - 6,000	2	10,198	3.9	1	5,098	2.1
4,000 - 5,000	4	18,690	7.1	6	27,583	11.2
3,000 - 4,000	2	7,177	2.7	2	6,425	2.6
2,000 - 3,000	10	24,292	9.3	5	11,659	4.7
1,000 - 2,000	25	36,570	14.0	17	26,179	10.6
500 - 1,000	27	19,137	7.3	23	17,321	7.0
200 - 500	62	21,021	8.0	35	10,995	4.5
100 - 200	82	10,995	4.2	41	5,739	2.3
25 - 100	327	15,101	5.8	172	9,275	3.8
Less than 25	544	4,189	1.6	258	2,417	1.0
Total	1,097	262,045	100.0	574	246,719	100.0

These figures reveal a growing concentration of mileage in large units and an absolute reduction in the number of operating companies. In 1920, 17.3 percent of the nation's mileage was operated in units exceeding 8,000 miles; by 1940, this percentage had increased to 36.1. At the other end of the scale, the mileage operated in units of less than 500 miles represented 19.6 per cent of the rail network in 1920 and only 11.6 percent in 1940. Equally significant is the fact that while total mileage operated was declining by only 5.8 per cent, the number of operating companies was reduced by half. This drop occurred chiefly among the short lines—those operating less than 100 miles of line—which numbered 871 in 1920 and only 430 in 1940.

These gains, however, can be attributed only in part to combinations. Reports of the Interstate Commerce Commission indicate that during the period from 1920 to 1940, 470 companies abandoned operations, forfeited their charter or failed

to report continued activity.⁹ Furthermore, the numerous cases where construction companies were taken over or properties already within a system were integrated, would have been possible without benefit of the consolidation plan or the exemption from the antitrust laws which the Transportation Act of 1920 provided.

The results achieved under the Act must, moreover, be judged in the light of the major object which Congress sought to accomplish when it enacted the consolidation laws, that is, the combination of weak and strong roads into a limited number of systems balanced as to size, competitive strength and earning power. Viewed in this light, the results were negligible. Instead of the 19 systems proposed in the tentative plan or the 21 approved in the complete plan, 574 line-haul railroad companies were reported in operation at the end of 1940. If switching and terminal companies are added, a total of 770 operating rail companies were in business in 1940. Although the average number of miles operated by each company increased between 1920 and 1940, the statistics already presented fail to reveal any appreciable evening out in the distribution of mileage. For example, carriers operating less than 100 miles of line represented 78 percent of all companies in 1920; in 1940, they were 75 percent.

In terms of earning power the disparity among systems was more pronounced in 1940 than in 1920. As a measure of earning ability, Ripley employed the ratio of net railway operating income to recorded investment in road and equipment for the year 1917, the last "normal" year for which statistics were available at the time of the tentative plan.¹⁰ A comparison of Ripley's results with similar statistics for 1940, a year in which railroad revenues improved considerably over the 1931-1939 average,¹¹ indicates that the average rate of return for all Class

⁹ Interstate Commerce Commission, *Statistics of Steam Railways of the United States*, 1921 and 1940.

¹⁰ See the Ripley Report, 63 I. C. C. 467, at pp. 641-655.

¹¹ Total railway operating revenues of Class I carriers averaged \$3,434,800,000 for the years 1931-1939. In 1940 they totaled \$4,296,600,000.

I roads declined from 5.45 percent in 1917 to 3.35 percent in 1940. But the loss in earning power was not at all evenly distributed. In the East and in the Pocahontas district, the average rate of return in 1940 was comparable with that of 1917, but in other sections of the country, particularly New England, the Central West and the Southwest, earning power fell sharply between these two years.

EARNING POWER OF LEADING CLASS I RAILROADS BY REGIONS, 1917 AND 1940

<i>Region</i>	<i>1917</i>	<i>1940</i>
New England	5.25	2.88
East	5.21	4.72
Pocahontas	6.71	6.75
Michigan	3.60	2.30
South	4.76	3.16
Northwest	5.91	3.09
Central West	5.32	2.11
Southwest	4.08	1.76

Differences in earning power between systems in the same region, a situation which the Transportation Act of 1920 sought to correct by consolidation, were as marked in 1940 as they had been twenty years earlier. A tabulation of the rates of return—that is, the ratio of net railway operating income to investment in road and equipment—of 68 carriers operating 95 percent of the mileage of Class I roads, fails to reveal any narrowing of the range of earning power among these important carriers between 1917 and 1940.

EARNING POWER OF 68 PRINCIPAL CLASS I RAILROADS, 1917 AND 1940

<i>Earning Power</i>	<i>1917</i>	<i>1940</i>
Over 10 percent	1	2
8 to 10 percent	2	0
7 to 8 percent	7	2
6 to 7 percent	6	3
5 to 6 percent	13	3
4 to 5 percent	10	7
3 to 4 percent	15	9
2 to 3 percent	8	17
1 to 2 percent	3	14
0 to 1 percent	2	7
Deficit shown	1	4

It has repeatedly been emphasized, however, that Senator Cummins and other sponsors of the consolidation provisions of the Transportation Act were concerned, not so much with the status of the larger railroads as they were with the condition of the short and weak lines threatened with ruin and abandonment in 1920, whose continued existence was to be ensured by consolidation. In a speech on the Senate floor in support of the consolidation plan, Senator Cummins recited the earnings of a number of domestic roads to illustrate the need of these carriers for legislative assistance.¹² Several years later he published a series of articles entitled "Railroad Transportation in the United States,"¹³ among which was included a list of 46 systems operating some 42,509 miles of road which were considered financially weak. Inspection reveals that 21 of these roads were controlled by other carriers at that time. Of the 25 independent systems, only 8 were absorbed prior to publication of the complete plan, and 3 more were taken over by other roads during the 1930's. Fourteen companies operating 25,124 miles of line—more than 80 percent of the original mileage of weak roads—still remained independent in 1940. Moreover, by 1940, in the neighborhood of 58 per cent of the mileage of weak roads mentioned by Senator Cummins was being managed by trustees and receivers.

The failure of the consolidation provisions of the Transportation Act to accomplish their basic purpose of saving the weak roads is also attested by the record of abandonments. In

¹² Congressional Record, U. S. Senate, December 4, 1929, p. 126.

¹³ See Hearings on S. 1870 before the Senate Committee on Interstate Commerce (69th Cong., 1st Sess.), 1926, p. 267; also W. C. Green, *Preliminary Report of Study of Railroad Consolidation and Unification*, submitted to the Senate Committee on Interstate Commerce (71st Cong., 3rd Sess.), 1931, pp. 108-119.

this connection, a short-line railroad executive observed that the Commission's own figures for 1934 indicated that—

Since the Transportation Act of 1920 was passed, there have been 1,020 applications from railroads requesting authority to abandon 18,689 miles of railroad. The Commission has granted 900 of these applications authorizing abandonment of 14,570 miles, including 6,408 miles of so-called short lines. Abandonment of system branches probably make up the rest. It is safe to say the short line investment so thrown away exceeded one hundred million dollars.¹⁴

During the depression applications to abandon railroad mileage steadily increased. From 1935 through 1940, authority was granted to abandon an additional 11,213 miles of road, making a total of 25,783 miles of line which passed out of the railroad picture between 1920 and 1940. The short line loss in this process was probably double the amount estimated by Mr. Duff in 1936.¹⁵

However attractive the idea of combining strong and weak roads may have seemed to the legislators, in practice the strong carriers shunned necessitous roads and instead took over properties which offered immediate profit or provided some strategic advantage to the acquiring carrier. The result was that short and weak lines were neglected, and the larger and more powerful carriers, instead of using their strength to assist the weak roads, were able to add to their size and power and increase the competitive inequality among railroads. The extent to which concentration of control of rail systems was de-

14 R. C. Duff, "Are the Short Lines Mistreated?", *Railway Age*, February 6, 1936.

15 So-called short lines accounted for 11,078 out of the total of 25,783 miles of abandoned road. At the end of this period the general condition of the short lines was still desperate. An indication of this is the return on investment of Class II and Class III line-haul railways, reported as 1.54 percent in 1940. Interstate Commerce Commission, *Statistics of Steam Railways of the United States*, 1940.

veloped under the Transportation Act of 1920 is revealed in the Splawn Report to the House Committee on Interstate and Foreign Commerce in 1931.¹⁶ According to this report, 14 groups of carriers controlled 90 per cent of all railroad mileage then operating in the United States.

<i>Name of System</i>	<i>Total Mileage Controlled Class I, II & III Roads</i>
Van Sweringen interests	29,484
Great Northern-Northern Pacific	28,278
Pennsylvania	24,184
Southern Pacific	14,495
St. Louis-San Francisco	14,354
Atlantic Coast Line	14,389
Atchison, Topeka & Santa Fe	13,182
New York Central	13,448
Baltimore & Ohio	11,356
Chicago, Milwaukee, St. Paul & Pacific	11,376
Chicago & North Western	10,205
Union Pacific	10,202
Southern	10,436
Illinois Central	9,322
Total, eliminating duplications	212,469

With few exceptions, the pattern of control of railroad properties changed very little after 1931.

The scramble for control of strategic railroads, characterized by President Willard as "a return to Harrimanism," had also this effect, that it wasted the resources of the carriers and assisted in forcing many of them into bankruptcy at a later date. In the process of acquisition, holding companies were organized, security values forced up by competitive bidding and stocks recklessly manipulated. Said the Federal Coordinator of these activities:¹⁷

16 *Regulation of Stock Ownership in Railroads*, House Report No. 2789 (71st Cong., 2nd Sess.), 1931, pp. lii-liii. Not pointed out in this report was the fact that the Union Pacific owned 20 percent of the common and more than 50 percent of the preferred stock of the Illinois Central.

17 First Report of the Federal Coordinator, Sen. Doc. 119 (73rd Cong., 2nd Sess.), 1934, p. 23.

The whole tendency was unhealthy, because it resulted in speculative rises in stock prices, the investment of capital on improvident terms, and preoccupation of railroad executives in empire planning.

Excessive prices paid for two acquisitions in 1921 and 1922 contributed to the insolvency of the Milwaukee in 1925. The Pennsylvania spent some \$130,000,000 for stocks which turned out to be practically worthless; in 1941, the Pennsylvania "wrote off" its books more than \$67,500,000 of Wabash stock. A year later the Pennsylvania acquired 99 percent of the common stock of the reorganized company at \$7,205,000 and 23 percent of the preferred stock for \$7,271,000.¹⁸ The Baltimore & Ohio, after investing nearly \$100,000,000 in the Reading, the Alton, the Buffalo, Rochester & Pittsburgh and the Buffalo & Susquehanna, later had to assume obligations of the last three of these carriers. As a result, the venerable "B & O" barely maintained solvency during the depression. In 1942 it charged to Surplus, \$25,756,000 for loss on its purchase of Alton stock.¹⁹ The Van Sweringens, no matter how sound the operating considerations behind their ventures, dissipated their personal fortunes and lost control of their properties through financial extravagance. Securities acquired at a cost of nearly \$100,000,000 by the Chesapeake & Ohio and issued by the Erie, the Nickel Plate, the Pere Marquette, and the Chicago & Eastern Illinois, had a value at the end of 1937 of only \$15,199,000.²⁰ In the Southwest, the Frisco and the Rock Island helped to precipitate mutual bankruptcy by purchasing each other's stock at fancy prices. In 1942 the

18 Oliphant, *Earning Power of Railroads*, 1943, p. 498.

19 *Ibid.*, p. 199.

20 "Consolidation of the Rail Transportation Facilities of the United States Into a Single System for Ownership and Operation under Private Management," memorandum of Commissioner Miller, March 31, 1938, sent under copy to Chairman Wheeler of the Senate Interstate Commerce Committee, April 13, 1938, p. 17.

Frisco wrote off its "investment" in the Rock Island at \$1 and charged \$10,506,000 to Profit and Loss.²¹

The tragedy of the consolidation law of the Act of 1920 lies not only in the fact that the combination of weak and strong roads into a limited number of systems intended by its framers, failed to be realized, but that the unifications to which the law actually gave rise, proved to be uneconomical and ruinous. Since most of the transactions approved under Section 5 of the Act were acquisitions of control, separate corporations were maintained, and in most instances the properties of carriers involved in the transactions were only partially integrated. Consequently, the economies derivable from complete consolidation remained out of reach. Moreover, the reckless manner in which control of railroad properties was extended seriously weakened resistance to the onslaught of depression years. Funds which could have been employed to reduce fixed charges or improve transportation service were tossed into an inflated stock market, and all too frequently the properties acquired passed into receivership or maintained solvency only through loans from the parent company. In either event, large losses were forced upon the purchasing carrier. Unsound financial policies of this character contributed materially to the debacle of the thirties, which left a third of the nation's rail network in the hands of receivers and trustees. It is safe to say that the failure of the railroads to consolidate has meant a financial loss to them and the nation running into billions of dollars.

REASONS FOR FAILURE

Why did the consolidation provisions of the Transportation Act fail? The answer is, first of all, that the Transportation Act lacked machinery adequate to secure the accomplishment of the consolidations which the Commission was required to approve in its complete plan. The Commission could, and did,

²¹ Oliphant, *op. cit.*, p. 452.

draw up and issue a plan calling for the merger of the carriers into a limited number of systems which followed out, in more or less reasonable fashion, the requirements as to competition, maintenance of routes and equalization of earnings which Congress had incorporated in the Transportation Act. The Commission could, and did, deny many carrier applications to merge and acquire properties which did not harmonize with its plan or with the stated requirements of the Act, though it displayed extreme liberality in making exceptions. But further than this the Commission could not go. It could not compel dissident groups to get together and iron out their differences. It had no power and could confer no power upon a majority of security holders to condemn the interests of troublesome minorities. It could not force one railroad to sell, and another to buy, securities which carried control of rail property. In short, the Commission could map consolidations, but it could not command their execution.

Senator Albert Cummins, author of the Transportation Act, freely admitted this defect of the Act's consolidation provisions. As far back as 1925, he pointed out that the original transportation bill which passed the Senate in 1919 had machinery to compel consolidations, but that everything had been struck out by the House except the making of a plan.²² The Senator added:

I say this in defense of the bill as it was originally conceived. I was the author of it, and I very frankly admit that the law as it is, is entirely inadequate, and I think impracticable; that is to say, without any means of enforcing a plan of consolidation which may be promulgated by the Interstate Commerce Commission.

Lack of authority to compel consolidation not only tied the hands of the Commission in carrying out the mandate of the Transportation Act, but was chiefly responsible for

²² Hearings on S. 224 before the Senate Committee on Interstate Commerce (68th Cong., 1st Sess.), 1925, p. 86.

the failure of the Federal Coordinator during the three years of his office (1933-1936) to accomplish more than a few of the projects which his investigations indicated would result in extensive reductions in operating costs. The Coordinator made recommendations and issued "orders," but he had no power to make anyone carry them out.

THE CARRIERS' ATTITUDE

Granting that consolidation might have been brought about by compulsory measures, the question must still be answered: Why didn't consolidation into a limited number of systems come about as the result of voluntary action by the carriers? The answer here is that the railway executives did not want it to come about. They did not want it to come about because they did not consider it to their personal advantage or the advantage of their companies to get together and carry out a comprehensive plan of consolidations, regardless of whether the plan was developed by the Commission or by themselves. It was not alone the fear of railway officers that consolidation would deprive them of their jobs and personal prestige, though this undoubtedly influenced their thinking.²³ It was the fact that these executives had been trained in a hard school where competition was regarded as the law of life and cooperation as something akin to conspiracy.²⁴ Their individuality expressed itself unmistakably at hearings on the tentative plan. Strong roads wished to be made stronger, systems of moderate strength preferred to remain independent and build themselves up, and weak roads insisted on freedom to bargain to their own best advantage. No one, with the exception of a few executives whose roads benefited greatly under the tentative

²³ Daniel Willard, President of the Baltimore & Ohio, once said that no rail executive wanted to "consolidate himself out of a job." See also Chapter VI, p. 182 f.

²⁴ The hostility of the Government to railroad combination (before 1920) and to "conspiracy" in rate making has helped to condition the executives' reactions to joint undertakings. Compare the Coordinator's remarks on the attitude of railway executive, Chapter VII, pp. 230-1.

plan, was willing to follow the rules of consolidation laid down in the Transportation Act, which provided for the creation of well-balanced systems by an orderly taking over of the weak by the strong. Nor did the major carriers in practice follow out these rules. Instead, the executives plunged into such competitive and indiscriminate grabbing of rail properties, particularly in the East, as to recall the boisterous days of Gould, Harriman and Hill.

Some opposition to wholesale consolidation came from railroad labor and from communities, but cannot be considered of paramount importance. The interests of labor were not in issue at hearings on the tentative plan nor during the years leading up to the adoption of the complete plan; in fact, the brotherhoods did not raise serious objections to consolidation until the 1930's, when the depression was making inroads into employment. It is true that the generous provisions for compensating employes displaced by consolidation written into the Emergency Transportation Act of 1933 reduced the immediate economies which could be derived from unification, but the Coordinator pointed out that these did not constitute insuperable barriers. The same may be said of the Washington Agreement of 1936. If the carriers had been seriously interested in consolidation, and if they had enjoyed financial health, the labor conditions set up in the Agreement could have been met and in time worthwhile savings in operating costs would have resulted from projects such as those recommended by the Federal Coordinator.

Some significance may be attached to objections raised by communities and local interests, but these did not, as a rule, exercise a determining influence on consolidation. There is no doubt that the preference shown by states, municipalities, and shippers for local facilities and maintenance of competition complicated the problem of devising an acceptable plan of consolidation. But the Commission's concern with the national interest and broader questions of policy very often

resulted in the overriding of local objections. For instance, the Commission approved the application of the Great Northern and Northern Pacific to unite despite arguments by communities interested in preserving local competition and by state authorities who were afraid unification would reduce their tax revenues.²⁵ For their part the carriers were willing to buck local interests whenever they considered it to their advantage to do so, as, for example, when the Pennsylvania entered New England and the Baltimore & Ohio acquired the Reading and the Western Maryland. During the 1930's, however, community pressure became a greater obstacle to individual unifications, for the reason that the interests of labor and localities merged, with both groups insisting on the maintenance of rail facilities as a source of employment and livelihood. This argument was given more weight by the Commission than the mere statement by a municipality that consolidation would eliminate competition or reduce transportation facilities in the area.²⁶

THE ROLE OF THE INTERSTATE COMMERCE COMMISSION

A second major reason for the miscarriage of the consolidation law was the behavior of the Commission itself. In 1921, the Commission's prompt adoption of the Ripley report, itself a document of considerable ingenuity and boldness, augured well for the success of consolidation. After this, however, the course of the Commission seemed to be dictated more by expediency than by a firm desire to carry out the intention of Congress with respect to consolidation. The first sign of weakness on the part of the Commission appeared in its decision in 1923 to approve the original Nickel Plate unifi-

²⁵ *Great Northern Pacific Ry. Co. Acquisition*, 162 I. C. C. 37 (1930).

²⁶ This was particularly true where abandonment of facilities accompanied unification, as in the application of eight midwestern roads to take over the Minneapolis & St. Louis. See the discussion of the *Associated Railways Case*, 228 I. C. C. 277 (1938), in Chapter VII.

cation,²⁷ which had been effected under state law, and which the Commission declined to block because it found the transaction had certain operating advantages. But by asserting that it did not have the power to set aside a consolidation effected under state law, the Commission relinquished some of its authority and invited the carriers to evade the provisions of the Act and confront the Commission with additional "shot-gun" proposals.

Of greater moment was the Commission's decision in 1925 to ask Congress to drop the idea of planned consolidation. Upset by the widespread opposition to the tentative plan displayed at hearings on the plan and the failure of the trunk lines to agree at their first series of conferences, the Commission asked Congress to be relieved of the duty of preparing a complete plan of consolidation and recommended that the carriers be permitted to combine as they pleased, subject only to the approval of the Commission.²⁸ The Commission stated that its experience had led it "to doubt the wisdom of the provisions of the law" which required adoption of a complete plan. This was, in effect, losing the contest by default. Even granting the complexities of framing a comprehensive consolidation plan and the probable unpopularity of such a plan in certain quarters, the situation was not as hopeless as the Commission's action indicated. Looking backward, it does not appear to have been any more difficult to come to a decision in 1925 than in 1929, particularly since during the intervening years acquisitions of control were made which complicated the problem of mapping evenly-balanced systems.

As a matter of procedure, if the complete plan which the Commission was required to adopt under the Act proved to be unacceptable and impracticable, Congress would have been pressed from all sides to repeal the law. Under these circum-

²⁷ *Operation of Lines and Issue of Capital Stock by the New York, Chicago & St. Louis R. R. Co.*, 79 I. C. C. 581 (1923).

²⁸ *Annual Report of the Interstate Commerce Commission*, 1925, p. 13.

stances, responsibility for the program's failure would have lodged with Congress, not with the Commission, which had only carried out the law as best it could.

In its letter to the Senate Interstate Commerce Committee in 1925, the Commission argued in support of its position that changing conditions might make decisions taken in a plan seem ill-advised at some later date. This was not a convincing argument, since under the law the Commission had authority to modify its complete plan to meet new conditions and, in fact, did not hesitate to modify its 1929 plan in a number of instances.

Very likely announcement of the plan in 1924 or 1925 would have prodded the eastern railway executives into reaching an agreement. Coming in these years, on an upswing in business activity, the plan would have had a much better chance of successful execution than it had at the end of 1929. Furthermore, promulgation of a plan would have kept before the executives a chart of the paths which Congress and the Commission thought consolidation ought to follow and would have discouraged the disregard of national policy and the reckless grabbing of railroad properties that took place. President Willard of the Baltimore & Ohio told Commissioner Eastman in June 1929 that he had been hopeful when the Transportation Act was passed—

that under the terms of the Act it would be possible for the railroads to go ahead in an orderly manner and work out consolidation plans such as contemplated in the Act, but that, in his opinion, the failure of the Commission to prepare a plan for the general guidance of the railroads had been responsible for bringing about what might be termed "a return of Harrimanism" and that the situation had now gotten into a condition where he felt it was wholly out of the control of the Commission, much to his regret.²⁹

²⁹ *Railroad Combination in the Eastern Region* (76th Cong., 3rd Sess.), 1940, Report No. 1182, Part 4, Exhibit C-3056.

The conduct of the Commission with respect to consolidation displayed an utter lack of statesmanship. To it was entrusted the job of preparing a plan and supervising the consolidation of the nation's railroads into a limited number of systems. Not only did it fail to publish a plan within a reasonable period of time, always hoping that Congress would "relieve" it of the duty, but failed—at least until 1938—to take a stand on the question: "Is consolidation in the public interest?" In 1920 Congress thought consolidation of railroads would promote the national welfare by saving the weak roads and by equalizing returns between systems competing under a given level of rates. Whether a majority of the members of the Commission shared this belief was never made clear. If they did, they should have asked for powers adequate to carry out the desired degree of system integration. If not, Congress should have been so informed.

The Commission never quite met the problem of consolidation squarely. Did it, for example, believe that consolidation brought about significant economies in railroad operation? The Commission never so stated, nor for that matter did it even recommend a study of the matter to Congress. Instead, Congress was left to its own resources to determine the wisdom or lack of wisdom of its consolidation policy, to analyze the relation of consolidation to the strong and weak road problem, to determine the contribution of consolidation to savings in operation and to improvements in railway service.³⁰ Congress was left to take the initiative in pressing for a study of consolidation (and coordination) by setting up a separate agency in the Emergency Act of 1933, the Federal Coordinator of Transportation, charging him with the responsibility for investigating and recommending action to prevent wasteful duplication in rail-

³⁰ In 1930 the Senate appointed a special counsel and asked him to investigate the relation of consolidation and unification to the public interest. See W. C. Green, *Preliminary Report of Study of Railroad Consolidations and Unifications* (71st Cong., 3rd Sess.), 1931.

road service. The reports and recommendations of the Federal Coordinator were published as early as 1934, but it was not until 1938 that the Commission came out in favor of consolidation.³¹ Even on this occasion the Commission dwelt at length upon the obstacles that might be encountered in carrying out a comprehensive system of consolidations and indicated a preference for a program of coordination, since the railroads could be persuaded to cooperate more fully in such a program. At no time has the Commission asked Congress for authority to compel consolidations.

The Commission may also be criticized for its delay in taking action to correct the abusive practices of the carriers, either by use of the powers granted in the Clayton Act to dissolve combinations which substantially restrained trade, or by requesting additional authority from Congress to control holding companies which had proved to be useful tools in the circumvention of public policy. Early in 1928, when the application of the Van Sweringens to control the Erie was rejected for the second time, Commissioner Eastman urged that the common control of the Nickel Plate, Chesapeake & Ohio and Erie be investigated in a Clayton Act proceeding.³² However, this recommendation was never carried out, and it was not until March 1929 that the Commission invoked the Clayton Act to divest the Baltimore & Ohio, the New York Central and the Nickel Plate of their three-cornered control of the Wheeling & Lake Erie. This road later became exclusively a Van Sweringen holding. Two other suits, one against the Baltimore & Ohio for its acquisition of the Western Maryland

31 *Annual Report of the Interstate Commerce Commission*, 1938, pp. 14-17.

32 Mr. Charles D. Mahaffie, then Director of the Commission's Bureau of Finance, recommended investigation of the control of the Wheeling & Lake Erie on February 18, 1927. *Railroad Combination in the Eastern Region* (76th Cong., 3rd Sess.), 1940, pp. 2058-2059. For Mr. Eastman's suggestion that the Clayton Act be used in 1928, see *Proposed Control of Erie R. R. Co. and Pere Marquette Co. by Chesapeake & Ohio Ry. Co.*, 138 I. C. C. 517, 545.

and the other against the Pennsylvania for control of the Wabash and the Lehigh Valley, dragged on into the depression, with the only result being that the roads in question were placed in trusteeship.

The Commission was even less energetic in the matter of holding companies. As far back as January 23, 1926, Commissioner Eastman testified before a Congressional committee that in several instances carriers had obtained control of rail properties through the medium of holding companies and that these acquisitions were not subject to review by the Commission.³³ Senator Wheeler remarked that holding companies offered a convenient escape from the antitrust laws.³⁴ Within the next few years holding companies multiplied and their abusive practices made a mockery of the policies laid down by Congress and the courts. Yet it was not until December 1929 that the Commission recommended that it be given power to curb the activities of these companies.³⁵ By 1933, when Congress finally acted upon this recommendation, the damage had been done, and both Congress and the Commission were loath to make railroads implicated in holding company activity disgorge the properties which they had swallowed up in previous years, since to do would have required them to suffer large losses in the market. As a result, although several acquisitions were neutralized, not a single control built up during the period of "scramble" by means of holding companies was ever destroyed by the Commission.

More energy might also have been shown by the Commission in securing the inclusion of short lines in unifications which it approved. Under Section 5(2) the Commission, in authorizing acquisitions of control, had the power to attach terms and conditions to its approval, including the condition that short

³³ Hearings on S. 1870 before the Senate Committee on Interstate Commerce (69th Cong., 1st Sess.), 1926, pp. 46-47.

³⁴ *Ibid.*, p. 47.

³⁵ *Annual Report of the Interstate Commerce Commission*, 1929, pp. 78-83, 89.

lines be taken over by the acquiring carriers. In 1926 the Commission went so far as to announce this dictum:³⁶

Every application should assume the burden of making reasonable provision in its plan for the possible incorporation of every connecting short line now in operation in the territory covered by the proposed grouping or unification.

In practice, however, this policy was not consistently carried out by the Commission. In 1926 the Waco, Beaumont, Trinity & Sabine, a short line in East Texas, intervened in the application of the Southern Pacific to unify its Texas and Louisiana properties, under lease to the Texas & New Orleans, and asked to be taken over by the applicant. This request was passed over by the Commission in its approval of the unification.³⁷ At a later date, when the Missouri Pacific made a similar application to unify its lines under lease, the Waco asked to be included with the Missouri Pacific, but the Commission said no, on the ground that the complete plan, which had appeared in the meantime, had put the Waco with the Southern Pacific.³⁸ In 1931, when the Southern Pacific applied for authority to acquire the Cotton Belt, the Waco again intervened, but to no avail. The Commission set as a condition to its approval of the application, that if it found the Waco should be included with the Southern Pacific, the latter should take it in.³⁹ However, there was never any action along this line by the Commission.

³⁶ *Nickel Plate Unification*, 105 I. C. C. 425, 429.

³⁷ The Commission noted that the intervenor had entered an application to extend its lines, and had stated at hearings that in case the application was granted it would have no further desire to be taken over. *Lease of the Southern Pacific Lines in Texas and Louisiana*, 117 I. C. C. 504 (1926).

³⁸ The Commission stated: "As the Waco had three points of connection with the lines of the Southern Pacific and only one with a line of the applicant system, its permanent association with the Southern Pacific to which we have assigned it in *Consolidation of Railroads*, 159 I. C. C. 522, rather than with the Missouri Pacific, seems to be indicated." *Missouri Pacific R. R. Co. Unification*, 166 I. C. C. 154 (1930).

³⁹ *St. Louis Southwestern Ry. Co. Control*, 180 I. C. C. 175 (1932).

In 1925, at hearings on the application of the Illinois Central to acquire control of the Gulf & Ship Island, the Fernwood, Columbia & Gulf, a short connecting line, intervened and asked to be included in the transaction. The Fernwood claimed that it was dependent upon the Illinois Central and the Gulf & Ship Island for business and that it would be "bottled up" if the application were granted. Its owners were willing to sell up to a reasonable price, or, if terms could not readily be worked out, at a price fixed by the Commission. But the Commission decided against the Fernwood with the statement:⁴⁰

In the absence of legislation authorizing or requiring compulsory consolidation, we are not inclined to assert that we have authority, under an application of this nature, to compel the applicant to acquire and maintain a connecting road.

Obviously, the Commission lacked the power to compel the Illinois Central to purchase the Fernwood, but it did have authority to make the Fernwood's inclusion in the proposed system a condition of its approval; if the Fernwood held out for an unreasonable price, the condition could have been rescinded. This authority was subsequently employed in a number of cases, including the New York Central unification of 1929, where the Commission assented to the application on the condition that the applicant take over five short lines operating in New York State.⁴¹ Here, the condition was eventually fulfilled. But the Commission had waited too long to adopt a vigorous policy toward the absorption of weak lines.

It should, however, be borne in mind that the problem of the weak roads was not as acute in the late twenties as it was when the Transportation Act was passed. The rate of return for all carriers rose materially between 1922 and 1929, and, as result of this new state of affluence, the short lines adopted a

⁴⁰ *Control of the Gulf & Ship Island R. R. Co.*, 99 I. C. C. 169 (1925).

⁴¹ *New York Central Unification*, 150 I. C. C. 278 (1929).

more independent attitude.⁴² Their support of additional consolidation legislation grew cooler, and, in bargaining with the strong roads, they frequently held out for unreasonable prices. This condition changed rapidly after 1929; a host of short lines entered receivership, and many were abandoned. But by this time the larger carriers were unequal to the task of taking them over.

Evidence indicates that the Commission was strongly influenced (misled?) by the financial splendor of the 1920's and by the political philosophy of the times which looked askance at Government interference in business affairs. The Commission's membership and outlook, usually a reflection of a number of personal, political and geographical influences, was substantially affected at the outset of the period as the result of a series of appointments by President Harding. Commissioner Potter, (who admittedly changed his mind on consolidation), was one of the five Harding nominees who took office in 1921.⁴³ Previously he had been president of a small southern railroad. Commissioner Esch, appointed to the Commission in 1921 after years of service in the House, came from the conservative Republican faction in Wisconsin and like Potter, held a bias against consolidation. While these two men had some training in railroad affairs, other appointees were not so gifted. Commissioner Campbell, also named to the Commission in 1921, had been chief counsel for shippers in intermountain rate cases; Commissioner Lewis, appointed at the same time, was a Republican journalist from Indiana; Commissioner Cox, the last of the five appointees, was a silk merchant and past president of an organization of commercial traveling men. None of these men could be expected to carry out forcefully a program of planned consolidation or for that

⁴² For a tabulation of earnings of weak roads during the 1920's, see Hearings before the Senate Committee on Interstate Commerce (69th Cong., 1st Sess.), 1928, pp. 272-277, 306-317; also W. C. Green, *op. cit.*, pp. 210-215.

⁴³ Potter had previously been nominated by Wilson but not confirmed.

matter to take the strong action required to halt the abuses of the combination movement.⁴⁴

Even Commissioner Eastman whose ability and fair-mindedness were universally conceded, remained inimical to comprehensive consolidation during the 1920's, partly because of his aversion to "bigness" and partly because of his disgust with the merry-go-round of finance associated with combinations then being manufactured. Not until his studies as Federal Coordinator in 1933 and 1934 convinced him of the large economies inherent in system integration did he become a vigorous advocate of consolidation. Similar studies carried on by the Commission at an earlier date might have produced the same conviction on the part of other commissioners. But these were not undertaken. In the face of economic prosperity and a conservative political environment, the Commission was content to let things ride.

It should be stated in the Commission's defense that much of its impotence stemmed from the inadequacy of the Transportation Act itself. The basic weakness of that Act, it has been pointed out, was the failure to confer authority to compel the carrying out of the consolidations approved in the complete plan. The Commission did not have this authority. Nor did it have the power to participate as an agent of the public in the formulation of terms and conditions of proposed consolidations. Instead, it was left merely a court, in the embarrassing position of being compelled to approve or disapprove a plan already worked out by executives, investors and bankers, at a stage when large sums of money might already have been spent to accomplish the result for which approval was sought. Quite often the Commission did not feel that the interests of short lines or minority security holders had been adequately taken care of, but was unwilling to upset arrangements which

⁴⁴ An excellent analysis of the Commission's personnel and of political influences surrounding the Commission from 1920 to 1931 may be found in *The Lake Cargo Coal Rate Controversy* by Dr. Harvey Mansfield: Columbia University Press, 1932, pp. 141-194.

had been worked out at considerable length and expense. The public interest would have been better served and more unifications and consolidations promoted, if the Commission had been permitted to go outside formal proceedings and public records and to hold conferences with executives and security owners seeking by expert negotiations to bring about combinations of a desirable character.⁴⁵

THE DEFICIENCIES OF THE TRANSPORTATION ACT

In analyzing the failure of consolidation under the Transportation Act, it should be kept in mind that Section 5 of the Act had but one major goal. This was the saving of the weak railroads of the country from financial and physical ruin. Consolidation was really accessorial to the new rule of rate-making established in Section 15a of the Act, which sought to ensure a fair and equitable return among roads based upon a fair value of their properties. In bringing about this equitable condition, the Act provided, as a matter of temporary relief, recapture of excess earnings of strong roads for use by the weak lines and, to effect the permanent salvation of the weak lines, consolidation with the strong roads into a limited number of large systems. The Act also established a system of valuation of physical properties to determine a base upon which a fair return could be calculated.

In retrospect, it appears that this treatment of consolidation was defective at several points. For one thing, the Transportation Act did not place enough emphasis upon the operating advantages of consolidation, that is, upon the economies and improvement in service which could be brought about through physical integration of properties. This aspect of consolidation, largely ignored throughout the 1920's, assumed widespread importance in the 1930's when the reduction in traffic volume

⁴⁵ In 1924 Commissioner Mark Potter stated his belief that more could be accomplished in the way of consolidations if the Commission participated in private conferences with railroad executives and security holders. *Railroad Combination in the Eastern Region*, Part 3, Exhibit C-1451.

and revenues made it necessary to cut operating costs drastically without impairing standards of service. The importance of economies resulting from consolidation was recognized in the Emergency Transportation Act of 1933, which established the Office of Federal Coordinator of Railroads and charged him with the duty of investigating and promoting coordination and consolidation so as to reduce excessive waste in the railroad system.

In the second place, the framers of the Transportation Act looked upon consolidation as a panacea for the weak road problem, on the assumption that the problem would disappear as weak lines were combined with stronger systems. It may be demonstrated, however, that there are some kinds of weakness for which consolidation is no solution.⁴⁶ Some of the main causes of weakness have been given as: (1) Erosion of traffic (the special traffic which the road was built to carry dries up, as in the case of many mining and logging lines); (2) insufficiency of traffic to provide a living for all the lines in a territory; (3) operating handicaps, such as excessive grades and curvature, light track and equipment; (4) improvident management; (5) financial exploitation; (6) unsatisfactory division of rates; (7) discrimination by a major carrier in favor of a competing line; (8) discrimination on part of major carrier in regard to servicing equipment, handling cars, etc., for short and feeder lines. When weakness exists because of a shortage of traffic, as in cases (1) and (2) above, consolidation may not cure but may actually spread the disease. Although operating economies may in some cases result from integration of lines in a sparse traffic area, in other instances

⁴⁶ See discussion of the weak road problem by Ben B. Cain, General Counsel for the American Short Line Railroad Association at Hearings on H. R. 11212 (69th Cong., 1st Sess.), 1926, at pp. 161-190; also Lewis R. Haney, "Advantages and Disadvantages of Consolidation," paper delivered before the 36th annual Meeting of the American Economic Association, *American Economic Review*, XIV, 88-108; J. M. Herring, *The Problem of Weak Railroads*, University of Pennsylvania, Philadelphia, Pennsylvania, 1929; and D. Philip Locklin, *Economics of Transportation* (rev.), Business Publications, Chicago, 1938, Chap. XIX.

abandonment may represent the best solution. The latter treatment is often more desirable today because other forms of transportation, which were not available in 1920, may be substituted for rail service. Where poor construction of a line is responsible for its penury, rebuilding of the property may provide strength, provided traffic conditions warrant the required capital outlay. As for improper division of rates and discrimination, relief here may generally be obtained from the Commission, though it is known that many kinds of discrimination incidental to competition are practiced by leading carriers without proper protection for the lines discriminated against. In cases of financial poverty brought about by bad management and exploitation, consolidation is not a sure remedy, since the same practices may be carried on in large systems. It was reported to the Senate Committee on Interstate Commerce in 1931 ⁴⁷ that a comparison of the financial history of 33 independent roads and 35 subsidiaries of large carriers, all 68 of which had been listed as earning less than 3 percent on book value from 1922 to 1924, indicated that "the independent roads had made much greater progress than those under the parental wings of larger systems." For the period 1927 to 1929, nineteen of the 33 independent roads earned more than 3 percent on book value, while only 11 of the 35 subsidiaries enjoyed earnings above 3 percent. It is possible that these subsidiaries were particularly weak and could not have survived without the protection of larger systems; but the more likely hypothesis is that association with major carriers did not benefit them.

Another mistake found in the consolidation clauses of the Transportation Act is the failure to distinguish value for rate-making purposes from value for purposes of consolidation. Section 15a of the Act directed the Commission to value the nation's railroad properties so as to fix a base upon which rates of return could be calculated. This, it was hoped, would assist

⁴⁷ W. C. Green, *op. cit.*, pp. 108-115.

not only in setting rates which would yield a fair return on a fair value of the properties, but would permit the segregation of recapturable excess earnings. The legislators, moreover, made consolidation hinge upon valuation in two respects, first, by the requirement that the Commission combine the railroads in such a way as to form systems which, under the same level of competitive rates, would earn approximately the same return on the value of the properties; and, second, by the requirement that the value of the securities of the consolidated corporations be no more than the aggregate value of the constituent properties as determined by the Commission. This link with valuation proved to be unfortunate. The task of valuing the railroads went on during the 1920's, but in 1929 the work was largely upset by the decision of the Supreme Court in the O'Fallon case.⁴⁸ Throughout this period the unsettled status of valuation represented a further obstacle to the adoption of a complete plan by the Commission which could conform with the requirements of the Act. In establishing these valuation requirements, Congress apparently overlooked the fact that the value of properties involved in a consolidation is their exchange value, based upon anticipated earnings rather than upon actual property investment or cost of reproducing the property. Under the usual arrangement, exchange of securities in mergers and consolidations takes place in accordance with current market quotations.⁴⁹ This principle was recognized by the Interstate Commerce Commission in 1931, when, in a decision involving the

48 *St. Louis & O'Fallon Ry. Co. v. United States*, 279 U. S. 461 (1929).

49 Professor Stuart Daggett has criticized the Cummins theory of consolidation on the grounds that the differential in the return to stockholders of weak and strong roads would be the same before and after consolidation under a given level of rates, since the securities of the new corporation would be distributed to stockholders of the former companies on the basis of their market value. However, Senator Cummins was interested, not in equalizing stockholders' returns, but in preserving weak roads by consolidation with the strong, thus equalizing returns among systems. His logic on this point was essentially sound. See S. Daggett, *Principles of Inland Transportation*, Harper & Bros., New York (3rd ed., 1940), pp. 572-573.

reasonableness of the price paid by the Baltimore & Ohio for the properties of the Alton, it was stated that the best measure of reasonable price was the commercial value of the Alton based upon its present and prospective earning capacity.⁵⁰

In mapping out its plan of consolidation, the Commission was directed by the Transportation Act not only to approximate a rough equality of earning power between systems, but to maintain competition as fully as possible and to preserve existing routes and channels of commerce wherever practicable. These last two requirements represent a striking inconsistency in policy. It is obviously impossible to consolidate and at the same time maintain competition either in its previous form or degree of intensity. It is equally impossible to consolidate and at the same time preserve existing channels of trade, since the operative effect of consolidation is to increase the use of certain traffic arteries while reducing or completely eliminating the use of alternate or duplicate facilities.

The Transportation Act of 1920 marked a break, but not a clean one, with the long-standing policy of enforcing competition among railroads which had been written into the Interstate Commerce Act of 1887 and the federal and state antitrust acts. As a result of the passage of the Act of 1920, the Interstate Commerce Commission was able to validate at least three combinations which the United States Supreme Court had found to be in violation of the antitrust laws, the merger of the Hill lines, the unification of the Southern Pacific and Central Pacific and the acquisition of the Delaware, Susquehanna & Schuylkill by the Lehigh Valley.⁵¹ However, in approving the application of the Hill lines to unite, the Commission made its approval conditional upon the sale by applicants of their controlling interest in the Burlington. This condition was added

⁵⁰ *Alton Railroad Co. Acquisition and Stock Issue*, 175 I. C. C. 301.

⁵¹ *Control of Central Pacific by Southern Pacific*, 76 I. C. C. 508 (1923); *Great Northern Pacific Ry. Co. Acquisition*, 162 I. C. C. 37 (1930); *Control of the Delaware, Susquehanna & Schuylkill by Lehigh Valley*, 86 I. C. C. 567 (1924).

because the Commission wished to preserve the competitive balance of power in the Northwest between the Hill lines and the insolvent Milwaukee, and thus conform to the requirements of the Transportation Act. Since the northern carriers did not relish the idea of selling the Burlington, particularly in a falling market, they later withdrew their application to unite. As a consequence, economies estimated at \$10,000,000 annually were lost.

The rapid development of other carriers during the twenty years of the Transportation Act completely destroyed the arguments for a policy of enforced competition among railroads. It is estimated that by 1940 public expenditure in non-rail facilities had reached nearly 19 billion dollars, three billion dollars more than the total value of railroad operating facilities.⁵² During the lean years of the 1930's the absorption of traffic by these new facilities contributed in large part to the wiping out of railroad investment values and the growth of railroad insolvency. This situation forced upon the country the realization that competition among railroads, instead of promoting economical and efficient transportation in the public interest, produced exactly the opposite, and that the abuses associated with a non-competitive railroad system could be effectively curbed by intelligent regulation and the competition of other carriers.

⁵² Unamortized public expenditure in transportation facilities were placed at \$18,681,000,000 compared with a depreciated value of railroad operating properties, exclusive of equipment, of \$16,000,000,000. *Annual Report of the Board of Investigation and Research*, 1943, p. 5.

CHAPTER IX

THE OUTLOOK FOR CONSOLIDATION

DESPITE a continually favorable national policy, very few unifications or consolidations have been carried out by domestic railroads since 1930. During the period from 1933 to 1936, Congress attempted to overcome the lag in merger activity by establishing the Office of Federal Coordinator of Transportation, but because of his limited authority the Coordinator was unable to make much headway against the opposition of railway executives and labor. In 1940, after several more years of inactivity, Congress wrote a new Transportation Act which, among other things, relieved the carriers from the alleged restrictions of the consolidation plan adopted under the Act of 1920, and from the provisions of the previous Act which required the preservation of competition, the maintenance of existing channels of trade and the creation of systems of approximately equal earning power. However, the relief thus afforded has not spurred the railroads to greater consolidation activity. On the contrary, very little has been accomplished under the Transportation Act of 1940.

The lack of progress of the past five years may, of course, be largely attributed to the preoccupation of the railroads with carrying the unusual volume of freight and passenger traffic thrust upon them during the war. On this assumption, the railroads may conceivably embark upon a new wave of acquisitions in post-war years, particularly since their financial position has been considerably improved.¹ Some evidence of a revival of con-

¹ Net earnings of Class I carriers have reached new high levels: in 1942, \$937,522,114; in 1943, \$901,323,626; and in 1944 \$684,058,573. During 1942, the funded debt of Class I roads, excluding companies operated by trustees and receivers, was reduced by \$324,375,299, or 3.71 per cent, and in 1943, by \$419,951,026, or 4.43 percent. As of October 31, 1944, reorganization plans for 29 carriers enabled them to reduce their long-term debt from \$3,115,609,000 to \$1,749,573,800. In addition, a great many roads have reduced fixed charges through the issuance of securities bearing lower interest rates than previous obligations. *Annual Reports of the Interstate Commerce Commission*, 1943, pp. 24-26; 1944, pp. 13-15.

solidation activity may be seen in the recent proposal to merge the Gulf, Mobile & Ohio with the Alton,² and the plan of the Chesapeake & Ohio to take over the Nickel Plate, the Pere Marquette and the Wheeling & Lake Erie.³

However, there is good reason to believe that the consolidations and acquisitions of control effected by the railroads in coming years, will be partial, will go only a fraction of the way towards achieving the degree of integration recommended by the Federal Coordinator in 1934. Nor will they approach the "limited number of systems" contemplated by Congress in 1920.

As ever, the most important restriction from the standpoint of consolidation is the attitude of railroad management. In June 1945, the Association of American Railroads released a report on consolidation⁴ which represented an able review of the subject but offered little basis for optimism as to future developments. The Association's report asserted that since 1890, "for various reasons there has not been a fair opportunity to test voluntary consolidation" and insisted that consolidations would come about in the normal course of events if the carriers were permitted to act on their own initiative, subject only to the approval of the Commission. Though the Association conceded

2 In approving the separation of the Alton Railroad from the Baltimore & Ohio's system and its purchase by the Gulf, Mobile & Ohio, the Interstate Commerce Commission estimated that the new 3,000 mile system reaching from Chicago to the Gulf would have a greater traffic potential than was provided by the Alton and the G,M & O separately. *New York Times*, September 21, 1945. An arrangement has also been worked out between the G,M & O on the one hand and the Burlington and Santa Fe on the other, which will furnish the Santa Fe with a St. Louis entrance. *Kansas City Star*, August 13, 1945.

3 This proposed combination of roads would in effect be the achievement (minus the Erie, but including the Wheeling & Lake Erie) of the consolidated system long sought after by the Van Sweringens. It would result in a system ranking among the first ten railroads of the country from the standpoint of mileage and among the first six in gross revenue. *Wall St. Journal*, August 22, 1945.

4 "Consolidation of Railroads," Report of the Committee for the Study of Transportation, Association of American Railroads, Washington, D. C., June 1945.

that the advantages of a limited number of systems were great, it contended that "enormous practical and legal difficulties . . . present almost insurmountable obstacles to compulsory consolidation within any reasonable time, or at any time."⁵ The report concluded with pleas for the right of railroads to operate other forms of transportation, for the right of the carriers to condemn minority stock interests, and for relief from taxes on securities issued for purposes of consolidation. This study is a clear indication that the general consolidation policy of railroad management is the same as it was under the Transportation Act of 1920,⁶ with the exception that there is more emphasis now placed upon entry by the railroads into other carrier fields. It is another manifestation of the individualism of railway executives that rebels at the idea of consolidation by governmental direction or fiat and prevents cooperative action by the carriers themselves in a comprehensive consolidation program. In view of the persistence of this attitude on the part of the executives, it appears far more logical to expect a competitive race to add to individual plant capacity during post-war years—when traffic loads will be lighter than at present—than to assume that the carriers will fortify their systems through concerted and systematic integration.

A second likely handicap to consolidation is found in the labor provisions of the present Transportation Act, as interpreted by the Interstate Commerce Commission. Paragraph (7) of Section 5(2) directs the Commission, as a condition to its approval of an application to merge, to require a fair and equitable arrangement which will ensure that no employee's status is impaired for a period of four years following the Commission's order. This provision has been taken by the Commis-

⁵ *Ibid.*, p. 30.

⁶ See Chapters 6 and 7. In the Fess-Parker bill, first introduced in 1926, the railroads sought power to condemn the interests of minority security-holders and relief from state taxes through federal incorporation. Now, however, federal incorporation has been abandoned by the carriers on the grounds that it would antagonize the state governments.

sion to mean that in order to merge, a carrier must show the Commission that economies are immediately realizable although no workers are dismissed, or that tangible and substantial savings will result from the merger after the period in which labor is protected. In a case where the Colorado & Southern applied for authority to lease the Ft. Worth & Denver City and estimated that after four years \$300,000 in operating expenses could be saved, the Commission denied the application because applicant was not able to prove any advantage during the initial four-year period, and thereafter the fate of the employees affected by the lease and the size of the economies resulting from the transaction were "uncertain and problematical."⁷ From this decision Mr. Eastman and two other Commissioners dissented vigorously, pointing out that the arguments of the majority against the proposed lease would apply equally well to any unification which contemplated labor economies. Mr. Eastman could not agree that the public interest required the railroads—⁸

to maintain a force of unneeded employees for the purpose of protecting the supply of expert labor. As experience had amply shown, if any industry is subjected to severe competitive conditions, as the railroads are, any attempt to preclude economies in operation will in the end reduce rather than increase the opportunities for employment in that industry. Under such conditions the only way to make work is to operate with the utmost economy and efficiency, not to indulge in waste.

Although the present outlook for consolidation is not bright, the failure of the railroads to hold their own in the face of post-war competition and the recurrence of widespread railroad insolvency would likely bring about a considerable demand for a planned program of consolidations. In this event the establishment of some propulsive or compulsive force to bring about the desired result would be essential. The history of consolidation

⁷ *Ft. Worth & Denver City Ry. Co. et al., Lease*, 247 I. C. C. 119 (1941), p. 127.

⁸ *Ibid.*, pp. 131-132.

under the Transportation Act of 1920 proves conclusively that the railroad managements will not of their own volition carry out a consolidation plan (nor for that matter will they cooperate voluntarily in any general program of individual unification and coordination projects). There is so much resistance to consolidation on the part of the average rail executive, and on the part of railway labor and communities, that some external force must be applied to push through any general plan for the limitation of systems. This force can be supplied only by the government.

In Great Britain, where conditions confronting the railways after the first World War were similar to those faced by our own carriers at that time, the government undertook, in the British Railway Act of 1921, to consolidate 120 separate railroad companies into four regional systems. Some facilities were left in joint operation, but competition was largely eliminated except at common points where the systems overlapped. The statute provided for the creation of an Amalgamation Tribunal with power to approve proposals for consolidation submitted by the carriers and to formulate its own plans where the railroads could not agree. The deadline for the presentation of plans to the Tribunal was January 1, 1923. However, well in advance of that date, the securities had been exchanged at values based upon earnings enjoyed in a relatively prosperous pre-war year (1913), and very few cases of disagreement actually reached the Tribunal. Its work was speedily dispatched and it was dissolved in October 1923. After the four regional systems had been formed, operating improvements resulting from the amalgamation were found to be so satisfactory that in 1932 the freight traffic of the four companies was pooled at all common points so as to make the most convenient terminals and the most economic rates available to shippers. In this way, virtually all railroad competition in the Island was eliminated.

While provisions designed to protect the interest of labor prevented the realization of full economies from the amalgamation,

the British railway systems were found to be operated more efficiently than before, rates and charges were reduced, returns to investors were maintained at creditable levels,⁹ and government ownership was averted. One authority estimates that the amalgamation resulted in annual savings of £42,300,000, more than a fourth of gross revenues, but such savings are difficult to approximate.¹⁰ Labor, it is contended, has benefitted as much as any group from this amalgamation since—

it enabled the trade unions to consolidate and hold all the gains made between the outbreak of war and the commencement of amalgamated operation; and further, labor secured a very effective system of settling disputes with the railway managements.¹¹

The task of carrying out a similar program in this country would, of course, be more difficult. The consolidating authority would be dealing with a network of roads with nearly twelve times the mileage of the British railways, serving an area more than thirty times as large. There is, however, no reason to think that a thorough integration of its railroads is

9 The standard return, based upon 1913 net earnings, was equivalent to a return of about 4.7 per cent on the invested capital. From 1923 through 1936, a period of 14 years, the British railways averaged about 70 percent of this return. W. L. Waters, "Rationalization of British Railways," paper presented before the American Society of Mechanical Engineers, Railroad Division, New York, May 11, 1938, pp. 3, 4.

10 *Ibid.*, p. 9. Most of this savings went to the shippers in the form of reduced rates. Sherrington says of the economies of British consolidation: "Although many of the early estimates of financial savings due to amalgamation were over-optimistic, the fact remains that railway expenditures... in 1932 amounted to £121,300,000 as compared with £156,900,000 in 1923. To what extent a reduction could have been possible without the formation of four large groups will never be known, because the conditions have not been static, and the state of *coeteris paribus* has never obtained. On the other hand it can be claimed with justice that many of the policies which have been most fruitful in economy... would hardly have been possible if there had still been in existence a large number of separate companies." C. E. R. Sherrington, *A Hundred Years of Inland Transport*, Duckworth, London, 1934, pp. 317-318.

11 Waters, *op. cit.*, p. 5.

beyond the authority or the administrative intelligence of this nation. That Congress has the power under the interstate commerce clause of the Constitution to make consolidation mandatory is generally agreed. This power is supported by eminent legal opinions¹² and has been so often conceded by the railroads themselves that they could have very little to stand on if they challenged it in court.¹³

Consolidation should not only be compulsory, it should also be carefully planned. Experience under the Transportation Act of 1920 has demonstrated that if they have the option, the railroad executives will go after the choicest lines, leaving weak and undesirable pieces of property littering the countryside. The results of such a process are uneconomic groupings of railway properties, the dissipation of financial resources in competitive bidding for select roads, and an increasing unbalance in the strength of rail systems. By contrast, a general plan based upon principles laid down by Congress and backed up by a clear assertion of governmental authority is the best means of ensuring a rationalization of the railroad plant which will be orderly, effective and in the interest both of the industry and the public.

12 Leslie Craven, legal advisor to the Coordinator, concluded that compulsory consolidation was within the power of the federal government. *First Report of the Federal Coordinator of Transportation*, Senate Document 119 (74th Cong., 2nd Sess.), 1934, pp. 23-24. See also Chapter VII, p. 229.

13 Testimony of Director General Walker D. Hines, Hearings on Extension of Tenure of Government Control of Railroads before the Senate Committee on Interstate Commerce (66th Cong., 1st Sess.), 1919, p. 949; testimony of Judge Robert Lovett of the Union Pacific, Hearings before the House Committee on Interstate and Foreign Commerce on Return of the Railroads to Private Ownership (66th Cong., 1st Sess.), 1919, p. 1293; testimony of Colonel A. P. Thom, General Counsel for the Association of Railway Executives on S. 2224 (68th Cong., 2nd Sess.), 1925, pp. 97-100, on S. 1871 (69th Cong., 1st Sess.), 1926, pp. 210-214, and on H. R. 11212 (69th Cong., 1st Sess.), 1926, pp. 485-491; "Authority of Congress to Confer Power to Consolidate upon State Corporations Engaged in Interstate Commerce," brief by Colonel Thom, Hearings on S. 4892 (69th Cong., 2nd Sess.), 1927, pp. 87-92; brief on the same subject prepared jointly by Colonel Thom and Judge Lovett in Hearings on H. R. 5641 (70th Cong., 1st Sess.), 1928, pp. 363-372.

It has on several occasions been suggested that governmental programs of consolidation and coordination could best be carried out by the establishment of an agency not burdened, as is the Commission, with the details of individual cases and quasi-judicial procedure. In 1919, the National Transportation Conference, composed of representatives of railroad management, labor, shippers, and government, supported before Congress the organization of a Transportation Board to administer major governmental policies.¹⁴ The railroad executives have also recommended the adoption of legislation setting up such an agency under the executive branch of the government with a cabinet representative.¹⁵ In 1938, the Committee of Three urged Congress to establish a Transportation Authority,¹⁶ and one of the members of that Committee, Commissioner Eastman, in testifying on the Omnibus Bill in 1939, advocated the creation of a well-equipped agency reporting both to Congress and the President with full powers to carry out a comprehensive integration of railroad companies.¹⁷

14 Hearings before the House Committee on Interstate and Foreign Commerce on Return of the Railroads to Private Ownership (66th Cong., 1st Sess.), 1919, pp. 145-187.

15 For example in Hearings on Extension of Government Control of Railroads before the Senate Committee on Interstate Commerce (66th Cong., 1st Sess.), 1919, pp. 307-320. This recommendation can also be found in the report of the Committee Appointed September 20, 1938 by the President of the United States to Submit Recommendations upon the General Transportation Situation (Committee of Six), December 23, 1938.

16 "Immediate Relief for the Railroads," Message of the President of the United States, House Document No. 583 (75th Cong., 3rd Sess.), 1938.

17 Mr. Eastman expressed confidence that some coordination and consolidation projects could be accomplished by a Transportation Authority by "aggressive leadership and negotiation" and without the use of force. Then he added:

"It is possible, however, as some well-informed persons believe, including railroad executives, that the authority would find that no progress could be made until the number of systems is very materially reduced, and that a plan of compulsory consolidations, such as was put through in Great Britain, is the only way to accomplish the desired result. In this event, the authority would prepare such a plan for the consideration of Congress. While much

While consolidations should not be regarded as a cure-all for the so-called railroad problem, they are, however, of tremendous value in reducing the competitive wastes which have been traditional with American railways.¹⁸ Estimates of economies resulting from consolidation of domestic rail carriers vary widely, depending upon the extent of integration contemplated, the time in which savings are to be made, the level of traffic assumed, and the preconceptions and motivations of those who make the estimates. The most careful survey, though unquestionably one of the most conservative, that made by the Federal Coordinator in 1933, found that some \$218,000,000 in annual operating expenses might have been saved under a seven-system plan of consolidation. The consensus of opinion is that savings possible under a six or seven-system plan of consolidation would range from \$200,000,000 to \$500,000,000 a year, while savings under a single consolidated system might well exceed \$500,000,000.¹⁹

more difficult than in Great Britain, I believe that such a plan would be legally practicable and feasible." Hearings before the House Committee on Interstate and Foreign Commerce on H. R. 2531 and H. R. 4862 (76th Cong., 1st Sess.), 1939, pp. 1719-1720.

18 From the standpoint of national policy some excess capacity may be considered desirable in order to allow for the carrying of emergency traffic, as in recent years. However, for normal peacetime purposes the present railroad plant is redundant and uneconomical. Moreover, any competitive expansion of facilities after the war would of course add still more to the excess of capacity over traffic requirements.

19 In 1939, in a pamphlet dealing with railway rehabilitation, reorganization and consolidation, the Railway Business Association declared:

"With good allowance for exaggeration in the claims of economies which might result from it, it can be admitted that if managements were permitted to employ consolidation to abandon little used facilities and economize in the employment of labor and materials, upwards of \$200,000,000 or more might be realized over a period of years. Some of this might come through coordination agreements without consolidation. But even with the restraints urged by organized labor, which will retard the realization of potential gains, extensive railroad consolidation does warrant the hope of eventual gains of very substantial proportions." Railway Business Association, *Proposals for Railway Rehabilitation in Relation to National Recovery and Defense*, R. B. A. Series No. 1, 1939.

The difficulties involved in carrying out a planned program of consolidation are undoubtedly great. Nearly 750 railway companies of all classes operating 227,000 miles of road under a wide variety of circumstances, would have to be grouped into practicable operating systems under such terms and conditions as Congress designated. Considerable opposition will be encountered from railway executives desiring to retain position and prestige, from communities fearful of losing their status as centers of railway activity, from state commissions who feel consolidation would result in a decline in tax receipts. Shippers and other segments of the public will look askance at any program which would substantially reduce competition. Railway workers will fear the effects of such a program upon employment, and it is certain that no large-scale integration of properties is possible without providing adequate protection to labor.

These difficulties can, however, be overcome by intelligent and determined administrative action reinforced by an adequate delegation of federal authority. There is no reason to believe that a satisfactory dismissal wage or some other plan for protecting labor cannot be written into the consolidation law. In the carrying out of that law, a skillful administrative body will find ways of settling differences of opinion and securing the cooperation of railroad managers, security holders and other interested parties by expert negotiation and persuasion, using compulsion only when necessary to carry out its objective.

In the last analysis it is the public interest in a healthy and vigorous transportation system which must take precedence over all special interests. Consolidation of railroads will do much to invigorate domestic transportation and through it the economic life of the nation. In this connection the Interstate Commerce Commission has stated:²⁰

See also B. N. Behling, *Railroad Coordination and Consolidation, A Review of Estimated Economies*, Bureau of Statistics, Interstate Commerce Commission, May 1940, pp. 59-60.

²⁰ *Annual Report of the Interstate Commerce Commission*, 1939, p. 15.

In dealing with the transportation problem one objective, so far as the Government is concerned, must surely be to achieve for the country the most efficient and economical system of transportation.

They make a serious mistake who regard the elimination of the wastes which are now inherent in the present railroad set-up and in the relations of all the agencies of transportation as a mere means of cheese-paring economy and depriving more men of work. Transportation success can never be the product of high rates and restricted service. As the makers of low-priced automotive vehicles fully demonstrated, there is no fixed amount of transportation to be performed, but rather an amount capable of indefinite expansion, provided the public can be offered sufficiently attractive service at a price which it is able to pay. Consolidation, coordination, and the better adjustment of competitive conditions will reduce transportation costs, but they can also open the door to the better service and lower prices which will create new business and employment.

APPENDIX A

THE TENTATIVE PLAN OF CONSOLIDATION OF THE INTERSTATE COMMERCE COMMISSION

AUGUST 3, 1921

63 I. C. C. 455

SYSTEM NO. I—NEW YORK CENTRAL

New York Central

Pittsburgh & Lake Erie

Rutland

Michigan Central

Chicago, Kalamazoo & Saginaw

Cleveland, Cincinnati, Chicago & St. Louis

Cincinnati Northern

Western Maryland

Fonda, Johnstown & Gloversville

Lake Erie & Pittsburgh

Central Indiana

Pittsburgh, Chartiers & Youghiogeny

Monongahela

Boston & Maine

Maine Central

Bangor & Aroostook

And all railway properties controlled by the above carriers through
lease, stock ownership, or otherwise, except:

Lake Erie & Western and Toledo & Ohio Central. Both now
controlled by New York Central

Zanesville & Western and Kanawha & Michigan. Both now
controlled by Toledo & Ohio Central

Indiana Harbor Belt, now controlled by New York Central,
30 per cent; Michigan Central, 30 percent; Chicago &
North Western, 20 per cent; Chicago, Milwaukee & St. Paul,
20 percent

Notes—

Prof. Ripley recommends the inclusion of the Western Mary-
land in system No. 5, Nickel Plate-Lehigh Valley.

Prof. Ripley makes no specific assignment of the Fonda, Johnstown & Gloversville.

The Lake Erie & Pittsburgh; Central Indiana; Pittsburgh, Chartiers & Youghiogheny; and Monogahela may be incorporated in either system No. 1 or No. 2. Prof. Ripley makes no specific assignment of these four roads, which are controlled jointly in the interest of the New York Central and the Pennsylvania.

The Boston & Maine, Maine Central, and Bangor & Aroostook may be included in system No. 7, New England, or system No. 7a, New England-Great Lakes.

Prof. Ripley rejects the trunk line treatment of the New England roads, but we present this alternative with a view to developing the situation upon hearing.

The Lake Erie & Western may be included in system No. 5, Nickel Plate-Lehigh Valley.

The Toledo & Ohio Central, Zanesville & Western, and Kanawha & Michigan may be included in system No. 9, Norfolk & Western.

The Indiana Harbor Belt is reserved for consideration in connection with terminal situations.

SYSTEM NO. 2—PENNSYLVANIA

Pennsylvania

West Jersey & Seashore
 Long Island
 Baltimore, Chesapeake & Atlantic
 Cumberland Valley
 Maryland, Delaware & Virginia
 New York, Philadelphia & Norfolk
 Pittsburgh, Cincinnati, Chicago & St. Louis
 Waynesburg & Washington
 Grand Rapids & Indiana
 Cincinnati, Lebanon & Northern
 Ohio River & Western
 Louisville Bridge & Terminal
 Wheeling Terminal
 Toledo, Peoria & Western

Lorain, Ashland & Southern

Lake Erie & Pittsburgh

Central Indiana

Pittsburgh, Chartiers & Youghiogheny

And all other railway properties controlled by any of the above carriers under lease, stock ownership, or otherwise, except the Norfolk & Western and railway properties controlled by it, which may be included in system No. 9, Norfolk & Western.

Notes—

The Lorain, Ashland & Southern may be included in system No. 4, Erie, which owns one-half the stock, the Pennsylvania owning the other half.

The Lake Erie & Pittsburgh; Central Indiana; Pittsburgh, Chartiers & Youghiogheny; and Monogahela may be included in system No. 1, New York Central, which controls one-half the stock, the Pennsylvania controlling the other half.

SYSTEM NO. 3—BALTIMORE & OHIO

Baltimore & Ohio

Sandy Valley & Elkhorn

Staten Island Rapid Transit

Reading system, comprising the Philadelphia & Reading, Central Railroad of New Jersey and various others

Cincinnati, Indianapolis & Western

Chicago, Indianapolis & Louisville

New York, New Haven & Hartford

Central New England

Lehigh & New England

Lehigh & Hudson

Notes—

The Baltimore & Ohio Chicago Terminal is reserved for consideration in connection with terminal situations.

The New York, New Haven & Hartford; Central New England; Lehigh & New England; and Lehigh & Hudson may be included in system No. 7, New England, or system No. 7a, New England-Great Lakes.

SYSTEM NO. 4—ERIE

Erie

Chicago & Erie

New Jersey & New York

New York, Susquehanna & Western

Delaware & Hudson

Delaware, Lackawanna & Western

Ulster & Delaware

Bessemer & Lake Erie

Buffalo & Susquehanna

Pittsburgh & Shawmut

Pittsburgh, Shawmut & Northern

Lorain, Ashland & Southern

Wabash lines east of the Mississippi River

Notes—

Prof. Ripley recommends including the Lehigh Valley in this system; but in this tentative plan that carrier is proposed as a main stem for system No. 5 Nickel Plate-Lehigh Valley.

The Delaware & Hudson, Delaware, Lackawanna & Western, Ulster & Delaware, Pittsburgh & Shawmut, and Pittsburgh, Shawmut & Northern may be included in system No. 7a, New England-Great Lakes.

The Bessemer & Lake Erie may be included in system No. 5, Nickel-Plate Lehigh Valley.

The Lorain, Ashland & Southern may be included in system No. 2, Pennsylvania.

SYSTEM NO. 5—NICKEL PLATE-LEHIGH VALLEY

Lehigh Valley

New York, Chicago & St. Louis

Toledo, St. Louis & Western

Detroit & Toledo Shore Line

Lake Erie & Western

Wheeling & Lake Erie

Pittsburgh & West Virginia

Bessemer & Lake Erie

Notes—

Prof. Ripley recommends the Lackawanna as main stem in this tentative plan it is replaced for that purpose by the Lehigh Valley, and made available for either system No. 7a, New England-Great Lakes, or system No. 4, Erie. He also includes the Buffalo, Rochester & Pittsburgh and Wheeling & Lake Erie in this system.

The Bessemer & Lake Erie may be included in system No. 4, Erie.

SYSTEM NO. 6—PERE MARQUETTE

Pere Marquette
 Detroit & Mackinac
 Ann Arbor
 Detroit, Toledo & Ironton
 Boyne City, Gaylord & Alpena

Notes—

The last-named road is a class-II road not specifically covered by Prof. Ripley's report.

SYSTEM NO. 7—NEW ENGLAND

New York, New Haven & Hartford
 New York, Ontario & Western
 Central New England
 Boston & Maine
 Maine Central
 Bangor & Aroostook
 Lehigh & Hudson River
 Lehigh & New England

Notes—

Prof. Ripley recommends inclusion of the New York, Ontario & Western in system No. 4, Erie.

The Lehigh & Hudson River is not included in any system under Prof. Ripley's report, but is left as a "Bridge line."

SYSTEM NO. 7A—NEW ENGLAND-GREAT LAKES

Same as system No. 7 with addition of the following, which otherwise with the exception of the Buffalo, Rochester & Pitts-

burgh may be included in system No. 4, Erie. That carrier may be included in system No. 5, Nickel Plate-Lehigh Valley.

Delaware & Hudson

Ulster & Delaware

Delaware, Lackawanna & Western

Buffalo, Rochester & Pittsburgh

Pittsburgh & Shawmut

Pittsburgh, Shawmut & Northern

Notes—

The addition of these lines has not been recommend by Prof. Ripley.

SYSTEM NO. 8—CHESAPEAKE & OHIO

Chesapeake & Ohio

Hocking Valley

Virginian

Notes—

Prof. Ripley recommends consolidation of the Virginian with the Norfolk & Western, Toledo & Ohio Central, and Kanawha & Michigan, in order to afford a western outlet for coal originating on the Virginian. This apparently would involve upgrade eastbound haul of westbound coal to the vicinity of Roanoke, unless there be new construction near Gauley Bridge, W. Va. The Virginian's present outlet to the west is via Deepwater, W. Va., and the Chesapeake & Ohio.

SYSTEM NO. 9—NORFOLK & WESTERN

Norfolk & Western

Toledo & Ohio Central

Zanesville & Western

Kanawha & Michigan

Kanawha & West Virginia

Notes—

From the Norfolk & Western is excepted the branch from Roanoke to Winston-Salem, which may be included in

system No. 11, Atlantic Coast Line-Louisville & Nashville and the branch from Lynchburg to Durham which may be included in system No. 12, Illinois Central-Seaboard.

SYSTEM NO. 10—SOUTHERN

Southern

Alabama Great Southern
 Georgia, Southern & Florida
 Mobile & Ohio
 Southern Railway in Mississippi
 Northern Alabama
 Cincinnati, New Orleans & Texas Pacific
 New Orleans Great Northern
 Alabama & Vicksburg

Notes—

Prof. Ripley recommends inclusion of the Georgia Southern & Florida branch from Valdosta, Ga., to Palatka, Fla., in the Seaboard system.

SYSTEM NO. 11—ATLANTIC COAST LINE-LOUISVILLE & NASHVILLE

Atlantic Coast Line

Atlanta & West Point
 Charleston & Western Carolina
 Louisville & Nashville
 Nashville, Chattanooga & St. Louis
 Louisville, Henderson & St. Louis
 Western Railway of Alabama
 Richmond, Fredericksburg & Potomac
 Norfolk Southern
 Atlanta, Birmingham & Atlantic
 Winston-Salem Southbound
 Roanoke to Winston-Salem branch of Norfolk & Western
 Florida East Coast
 Carolina, Clinchfield & Ohio
 Georgia & Florida
 Gulf, Mobile & Northern
 Mississippi Central

Notes—

Prof. Ripley recommends that the Richmond, Fredericksburg & Potomac and Florida East Coast retain their present status without inclusion in any system.

The Carolina, Clinchfield & Ohio may be included in system No. 12, Illinois Central-Seaboard. Prof. Ripley recommends inclusion in system No. 10, Southern.

The Gulf, Mobile & Northern and Mississippi Central are not specifically included in any system under Prof. Ripley's report.

SYSTEM NO. 12—ILLINOIS CENTRAL-SEABOARD

Illinois Central

Yazoo & Mississippi Valley

Central of Georgia

Seaboard Air Line

Lynchburg, Va. to Durham, N. C., branch of the Norfolk & Western

Gulf & Ship Island

Tennessee Central

Carolina, Clinchfield & Ohio

Notes—

Prof. Ripley recommends that a separate system be built around the Seaboard Air Line.

The Gulf & Ship Island is not included in any system by Prof. Ripley.

The Carolina, Clinchfield & Ohio may be included in system No. 11, Atlantic Coast Line-Louisville & Nashville.

SYSTEM NO. 13—UNION PACIFIC-NORTH WESTERN

Union Pacific

St. Joseph & Grand Island

Oregon Short Line

Oregon-Washington Railroad & Navigation Company

Los Angeles & Salt Lake

Chicago & North Western

Chicago, St. Paul, Minneapolis & Omaha

Lake Superior & Ishpeming

Wabash lines west of the Mississippi River

Notes—

Prof. Ripley recommends inclusion of the Central Pacific in this system.

The Lake Superior & Ishpeming is not specifically included in any system by Prof. Ripley.

SYSTEM NO. 14—BURLINGTON-NORTHERN PACIFIC

Chicago, Burlington & Quincy
 Northern Pacific
 Chicago Great Western
 Minneapolis & St. Louis
 Spokane, Portland & Seattle

Notes—

From the Chicago, Burlington & Quincy are excepted the Colorado & Southern and Fort Worth & Denver City, which may be included in system No. 16, Santa Fe. Prof. Ripley recommends that they be included in system No. 19, Chicago-Missouri Pacific.

Prof. Ripley recommends extension of this system to the Pacific Coast by including the Denver & Rio Grande and the Western Pacific. He also recommends redistribution of portions of the Minneapolis & St. Louis and Chicago Great Western.

The Spokane, Portland & Seattle may be included in system No. 15, Milwaukee Great Northern.

SYSTEM NO. 15—MILWAUKEE-GREAT NORTHERN

Chicago, Milwaukee & St. Paul.
 Great Northern
 Chicago, Terre Haute & Southeastern
 Duluth & Iron Range
 Duluth, Missabe & Northern
 Green Bay & Western
 Spokane, Portland & Seattle
 Butte, Anaconda & Pacific

Notes—

The Green Bay & Western and Butte, Anaconda & Pacific are not included in any system under Prof. Ripley's report. The Spokane, Portland & Seattle may be included in system No. 14, Burlington-Northern Pacific.

Prof. Ripley recommends that the eastern half of the Chicago & Eastern Illinois be included in this system.

SYSTEM NO. 16—SANTA FE

Atchison, Topeka & Santa Fe
Gulf, Colorado & Santa Fe
Colorado & Southern
Fort Worth & Denver City
Denver & Rio Grande
Western Pacific
Utah Railway
Northwestern Pacific
Nevada Northern

Notes—

Prof. Ripley recommends inclusion of the Colorado & Southern and the Fort Worth & Denver City in the Missouri-Pacific system. He also recommends inclusion of a part of the Gulf Coast Lines in the above system.

Prof. Ripley recommends that the Northwestern Pacific retain its present status.

The Nevada Northern is not specifically included in any system by Prof. Ripley. It may be included in system No. 17, Southern Pacific-Rock Island.

SYSTEM NO. 17—SOUTHERN PACIFIC-ROCK ISLAND

Southern Pacific Company
Nevada Northern
Chicago, Rock Island & Pacific
Chicago, Rock Island & Gulf
Arizona & New Mexico
El Paso & Southwestern
San Antonio & Arkansas Pass
Trinity & Brazos Valley

Midland Valley
 Vicksburg, Shreveport & Pacific
 Chicago, Peoria & St. Louis

Notes—

The Nevada Northern may be included in system No. 16, Santa Fe.

The Arizona & New Mexico and Chicago, Peoria & St. Louis are not specifically included in any system by Prof. Ripley.

The Trinity & Brazos Valley may be included in system No. 18, Frisco-Katy-Cotton Belt. So recommended by Prof. Ripley.

Prof. Ripley recommends redistribution of portions of the carriers included by us in this system.

SYSTEM NO. 18—FRISCO-KATY-COTTON BELT

St. Louis-San Francisco
 St. Louis-Southwestern
 Louisiana Railway & Navigation Company.
 Chicago & Alton
 Missouri, Kansas & Texas
 Trinity & Brazos Valley
 San Antonio, Uvalde & Gulf

Notes—

The Trinity & Brazos Valley may be included in system No. 17, Southern Pacific-Rock Island.

Prof. Ripley recommends inclusion of the San Antonio, Uvalde & Gulf in either system No. 17, Southern Pacific-Rock Island, or in a Southwestern-Gulf system.

Prof. Ripley recommends redistribution of portions of the carriers included by us in this system.

SYSTEM NO. 19—CHICAGO-MISSOURI PACIFIC

Chicago & Eastern Illinois
 Missouri Pacific
 Kansas City Southern
 Kansas City, Mexico & Orient
 Kansas, Oklahoma & Gulf

Texas & Pacific

Fort Smith & Western

Louisiana & Arkansas

Gulf Coast Lines

International & Great Northern

Notes—

Prof. Ripley recommends redistribution of portions of the carriers included by us in this system.

APPENDIX B

THE COMPLETE PLAN OF CONSOLIDATION OF THE INTERSTATE COMMERCE COMMISSION

(Excluding Terminal Properties Listed by the Commission)

DECEMBER 9, 1929

159 I. C. C. 522

SYSTEM NO. I—BOSTON & MAINE

Boston and Maine Railroad
Delaware and Hudson Company
Bangor and Aroostook Railroad Company
Maine Central Railroad Company
St. Johnsbury and Lake Champlain Railroad Company
Rutland Railroad Company—O. & L. C. Division, Rouses Point
to Ogdensburg
Montpelier & Wells River Railroad
Wilkes-Barre Connecting Railroad Company (undivided one-half
interest).
Monson Railroad Company
Kennebec Central Railroad Company
Knox Railroad Company
Wiscasset, Waterville & Farmington Railroad Company
Lime Rock Railroad Company
Hoosac Tunnel and Wilmington Railroad Company
Suncook Valley Railroad
Berlin Mills Railroad Company
Middleburg and Schoharie Railroad
Hardwick and Woodbury Railroad Company
Barre and Chelsea Railroad Company
Bridgton and Saco Railroad Company
Sandy River and Rangeley Lake Railroad
Boston, Revere Beach and Lynn Railroad Company
Troy Union Railroad Company (undivided two-thirds interest)
Mt. Washington Railway Company
Clarendon and Pittsford Railroad Company (undivided one-half
interest)
Woodstock Railway Company (undivided one-half interest)
Lake Champlain and Moriah Railroad Company

SYSTEM NO. 2—NEW HAVEN

The New York, New Haven and Hartford Railroad Company
New York, Ontario and Western Railway Company
The New York Connecting Railroad Company (undivided one-half interest)
The Lehigh and Hudson River Railway Company
South Manchester Railroad Company
Fore River Railroad Corporation
Moshassuck Valley Railroad Company
The Narragansett Pier Railroad Company
Wood River Branch Railroad Company
Grafton and Upton Railroad Company (undivided one-half interest)

SYSTEM NO. 3—NEW YORK CENTRAL

The New York Central Railroad Company
Boston and Albany Railroad
The Michigan Central Railroad Company
The Cleveland, Cincinnati, Chicago and St. Louis Railroad Company
The Cincinnati Northern Railroad Company
The Pittsburgh and Lake Erie Railroad Company
Evansville, Indianapolis and Terre Haute Railway Company
The Virginian Railway Company
The Ulster and Delaware Railroad Company
Rutland Railroad Company, except O. & L. C. Division
Boyne City, Gaylord and Alpena Railroad Company
Bristol Railroad Company
The Clarendon and Pittsford Railroad Company (undivided one-half interest)
Grafton and Upton Railroad Company
Chicago, Attica and Southern Railroad Company
The Federal Valley Railroad Company
Fonda, Johnstown and Gloversville Railroad Company
Glenfield and Western Railroad Company
Grasse River Railroad Corporation
Lake Erie, Franklin and Clarion Railroad Company
The Lakeside and Marblehead Railroad Company

The Lowville and Beaver River Railroad Company
The Marcellus and Otisco Company, Inc.
Norwood and St. Lawrence Railroad Company
Skaneateles Railroad Company
Dexter and Northern Railroad Company
Campbell's Creek Railroad Company
Kelley's Creek and Northwestern Railroad Company
Kelley's Creek Railroad Company
The Lorain and Southern Railroad Company
Fulton Chain Railway Company
Cambria and Indiana Railroad Company (undivided one-third interest)
Central Indiana Railway Company (undivided one-half interest)
Cherry Tree and Dixonville Railroad Company (undivided one-half interest)
The Fairport, Painesville and Eastern Railroad Company (undivided one-third interest)
Genessee and Wyoming Railroad Company (undivided one-fifth interest)
Lake Erie and Pittsburgh Railway Company (undivided one-fourth interest)
The Lake Terminal Railroad Company (undivided one-fourth interest)
Muncie and Western Railroad Company (undivided one-third interest)
McKeesport Connecting Railroad Company (undivided one-third interest)
Beaver Valley Railroad Company (undivided one-half interest)
Indiana Northern Railway Company (undivided one-fourth interest)
The Lake Erie and Fort Wayne Railroad Company (undivided one-third interest)
South Buffalo Railway Company (undivided one-sixth interest)
Troy Union Railroad Company (undivided one-sixth interest)
The Owasco River Railway
The Monongahela Railway Company (undivided one-third interest)
Pittsburgh, Chartiers & Youghiogeny Railway Company (undivided one-half interest)

Half interest in line of Virginian between Gilbert and Mullens,
W. Va.

SYSTEM NO. 4—PENNSYLVANIA

The Pennsylvania Railroad Company
The Long Island Railroad Company
West Jersey and Seashore Railroad Company
Baltimore, Chesapeake and Atlantic Railway Company
Wilkes-Barre Connecting Railroad Company (undivided one-half
interest)
The New York Connecting Railroad Company (undivided one-half
interest)
The New York and Long Branch Railroad Company (undivided
one-half interest)
Arcade and Attica Railroad Corporation
Bellefonte Central Railroad Company
Coudersport and Port Alleghany Railroad Company
The East Broadtop Railroad and Coal Company
Hickory Valley Railroad Company
The Huntington and Broad Top Mountain Railroad and Coal
Company
Kane and Elk Railroad Company
Kishkacouquillas Valley Railroad Company
Ligonier Valley Railroad Company
Marion Railway Corporation
Maryland and Delaware Coast Railway Company
The Pittsburg, Lisbon and Western Railroad Company
The Pittsburgh and Susquehanna Railroad Company
Sheffield and Tionesta Railway Company
Youngstown and Ohio River Railroad Company
The Stewardstown Railroad Company
Strasburg Railroad Company
Susquehanna River and Western Railroad Company
Tuscarora Valley Railroad Company
The Washington, Brandywine and Point Lookout Railroad
Company
The Winfield Railroad Company
Dents Run Railroad Company

Donora Southern
Alliquippa and Southern Railroad Company
Chesapeake Beach Railway Company
Pennsylvania and Atlantic Railroad Company
Scootac Railway Company
The Monongahela Railway Company (undivided one-third interest)
Cambria and Indiana Railroad Company (undivided one-third interest)
Central Indiana Railroad Company (undivided one-half interest)
Cherry Tree and Dixonville Railroad Company (undivided one-half interest)
Cumberland and Pennsylvania Railroad Company (undivided one-third interest)
Genesee and Wyoming Railroad Company (undivided one-fifth interest)
Lake Erie and Pittsburgh Railway Company (undivided one-half interest)
Muncie and Western Railroad Company (undivided one-third interest)
Etna and Montrose Railroad Company (undivided one-half interest)
Johnstown and Stony Creek Railroad (undivided one-half interest)
McKeesport Connecting Railroad Company (undivided one-third interest)
New Haven and Dunbar Railroad Company (undivided one-half interest)
Beaver Valley Railroad Company (undivided one-half interest)
Conemaugh and Black Lick Railroad Company (undivided one-half interest)
Steelton and Highspire Railroad Company (undivided one-fourth interest)
Indiana Northern Railway Company (undivided one-fourth interest)
Lake Erie and Fort Wayne Railroad Company (undivided one-third interest)
Patapsco and Back Rivers Railroad Company (undivided one-third interest)

Benwood and Wheeling Connection Railway Company (undivided one-third interest)
South Buffalo Railway Company (undivided one-sixth interest)
Baltimore and Eastern Railroad Company
The Ohio River and Western Railway Company
Western Allegheny Railroad Company
Pittsburgh, Chartiers & Youghiogheny Railway Company (undivided one-half interest)

SYSTEM NO. 5—BALTIMORE & OHIO

The Baltimore & Ohio Railroad Company
Reading Company
The Central Railroad Company of New Jersey
Buffalo and Susquehanna Railroad Corporation
Atlantic City Railroad Company
The Staten Island Rapid Transit Railway Company
Perkiomen Railroad Company
Port Reading Railroad Company
The Chicago and Alton Railroad Company
Buffalo, Rochester and Pittsburgh Railway Company
Detroit, Toledo and Ironton Railroad Company (undivided one-half interest)
The Detroit and Toledo Shore Line Railroad Company (undivided one-half interest)
Chicago, Indianapolis and Louisville Railway Company (undivided one-half interest)
Trackage rights over Western Maryland between Shippensburg, Pa., and Cherry Run, W. Va.
The Sharpsville Railroad Company
Castleman River Railroad Company
Chestnut Ridge Railway Company
Cornwall Railroad Company
The Kansas and Sidell Railroad Company
Maryland and Pennsylvania Railroad Company
Mount Hope Mineral Railroad Company
Mount Jewett, Kinzue and Riterville Railroad Company
The New York and Long Branch Railroad Company (undivided one-half interest)

Quakertown and Bethlehem Railroad Company
Rahway Valley Company
Raritan River Railroad Company
Stone Harbor Railroad Company
The Tuckerton Railroad Company
Philadelphia and Beach Haven Railroad Company
The Ursina and North Fork Railway Company
Upper Merion and Plymouth Railroad Company
The Valley Railroad Company
Washington Run Railroad Company
West Virginia Northern Railroad Company
Wharton and Northern Railroad Company
Wildwood and Delaware Bay Short Line Railroad Company
The Yale Short Line Railroad Company
Preston Railroad Company
The Buffalo Creek and Gauley Railroad Company
Rowlesburg and Southern Railroad Company
Strouds Creek and Muddlety Railroad Company
West Virginia Midland Railway Company
Winchester and Western Railroad Company
The Brownstone and Middletown Railroad Company
Tionesta Valley Railway Company
The Monongahela Railway Company (undivided one-third interest)
Cambria and Indiana Railroad Company (undivided one-third interest)
Cumberland and Pennsylvania Railroad Company (undivided one-third interest)
The Fairport, Painesville and Eastern Railroad Company (undivided one-third interest)
Genesee and Wyoming Railroad Company (undivided one-fifth interest)
The Iron-ton Railroad Company (undivided one-half interest)
Northampton and Bath Railroad Company (undivided one-half interest)
The Lake Terminal Railroad Company (undivided one-fourth interest)
Etna and Montrose Railroad Company (undivided one-half interest)

Johnstown and Stony Creek Railroad (undivided one-half interest)
 McKeesport Connecting Railroad Company (undivided one-third interest)
 New Haven and Dunbar Railroad Company (undivided one-half interest)
 Conemaugh and Black Lick Railroad Company (undivided one-half interest)
 Steelton and Highspire Railroad Company (undivided one-half interest)
 Patapsco and Back Rivers Railroad Company (undivided one-third interest)
 Benwood and Wheeling Connecting Railway Company (undivided one-third interest)
 Philadelphia, Bethlehem and New England Railroad Company (undivided one-half interest)

SYSTEM NO. 6—CHESAPEAKE & OHIO—NICKEL PLATE

The Chesapeake & Ohio Railway Company (excluding Chesapeake and Ohio Railway Company of Indiana)
 The Hocking Valley Railroad Company
 Pere Marquette Railway Company
 Erie Railroad Company (including Chicago and Erie Railroad Company, New York, Susquehanna and Western Railroad Company, and New Jersey and New York Railroad Company)
 The Delaware, Lackawanna and Western Railroad Company
 The New York, Chicago, and St. Louis Railroad Company
 Bessemer and Lake Erie Railroad Company
 The Pittsburg and Shawmut Railroad Company
 Chicago and Illinois Midland Railway Company
 Jacksonville and Havana Railroad Company
 Chicago, Springfield and St. Louis Railway Company
 Alton and Eastern Railroad Company
 The Detroit and Toledo Short Line Railroad Company (undivided one-half interest)
 Also the following trackage rights:
 Over the Baltimore and Ohio from Dayton, Ohio to Hamilton and Cincinnati, Ohio, and Indianapolis, Ind.
 Over the Southern from Orange, Va., to Potomac Yards, Va.

Over the Cleveland, Cincinnati, Chicago, and St. Louis, and
Baltimore and Ohio, from Rushville, Ind., to Louisville, Ky.

Over the Louisville and Nashville from Lexington, Ky., to
Louisville.

Arcadia and Betsey River Railway Company

The Dansville and Mount Morris Railroad Company

Delaware Valley Railway Company

Detroit and Mackinac Railway Company

Detroit, Caro and Sandusky Railway Company

East Jordan and Southern Railroad Company

Manistee and North-Eastern Railroad Company

Middletown and Unionville Railroad Company

Morristown and Erie Railroad Company

New York and Pennsylvania Railroad Company

Port Huron and Detroit Railroad Company

Prattsburg Railway Corporation

Sterling Mountain Railway Company

Unadilla Valley Railway Company

Unity Railways Company

West Pittston-Exeter Railroad Company

The Kanawha Central Railway Company

Winifrede Railroad Company

Kanawha, Glen Jean and Eastern Railroad Company

Ludington and Northern Railway

The Euclid Railroad Company

East Kentucky Southern Railway Company

Brooksville and Ohio River Railroad Company

Big Sandy and Kentucky River Railway Company

Morehead and North Fork Railroad Company

Nelson and Albemarle Railroad Company

Virginia Central Railway

Half interest in line of Virginian between Gilbert and Mullens,
W. Va.

The Buffalo Creek Railroad Company (undivided one-half interest)

The Fairport, Painesville and Eastern Railroad Company (un-
divided one-third interest)

Genessee and Wyoming Railroad Company (undivided one-fifth
interest)

- Northampton and Bath Railroad Company (undivided one-half interest)
The Lake Terminal Railroad Company (undivided one-fourth interest)
Muncie and Western Railroad Company (undivided one-third interest)
Lake Erie and Fort Wayne Railroad Company (undivided one-third interest)
South Buffalo Railway Company (undivided one-sixth interest)

SYSTEM NO. 7—WABASH-SEABOARD

- Wabash Railroad Company
Lehigh Valley Railroad Company
The Wheeling and Lake Erie Railway Company
The Pittsburgh and West Virginia Railway Company
Western Maryland Railway Company

Also the following trackage rights:

- Over the Pennsylvania from Logansport to Effner, Ind.
Over the Grand Trunk, Ashley to Muskegon, Mich.
Over the Reading between Shippensburg and Harrisburg, Pa.
Over the Pennsylvania from Harrisburg to Rockville, Pa.
Over the Reading from Rockville to Blackwood, Pa.
Over the Reading from South Bethlehem to Philadelphia, Pa.
Over the Pennsylvania from Delphos, Ohio to Fort Wayne, Ind.

- The Chaffee Railroad Company
East Berlin Railroad Company
Emmitsburg Railroad Company
Susquehanna and New York Railroad Company
Williamsport and North Branch Railway Company
Chesapeake Western Railway
Valley River Railroad
Big Sandy and Cumberland Railroad Company
Franklin and Pittsylvania Railway Company
Marion and Rye Valley Railway Company
Virginia Southern Railroad Company
Cumberland and Pennsylvania Railroad Company (undivided one-third interest)

- The Buffalo Creek Railroad Company (undivided one-half interest)
Genessee and Wyoming Railroad Company (undivided one-fifth interest)
The Ironton Railroad Company (undivided one-half interest)
The Lake Terminal Railroad Company (undivided one-fourth interest)
Patapsco and Black Rivers Railroad Company (undivided one-third interest)
Benwood and Wheeling Connecting Railway Company (undivided one-third interest)
Philadelphia, Bethlehem and New England Railroad Company (undivided one-half interest)
South Buffalo Railway Company (undivided one-sixth interest)
- Aberdeen and Rockfish Railroad Company
Bennettsville—Cheraw Railroad Company
Birmingham and Southeastern Railroad Company
Buffalo, Union-Carolina Railroad
Cape Fear Railways, Inc.
Cliffsville Railroad Company
Carolina and Northeastern Railroad Company
Durham and Southern Railway Company
Edgemoor and Manetta Railway
Piedmont and Northern Railway Company
The Georgia Southwestern and Gulf Railroad Company
High Point, Thomasville and Denton Railroad Company
Lawndale Railway and Industrial Company
Macon, Dublin and Savannah Railroad Company
Maxton, Alma and Southbound Railroad Company
Moore Central Railway Company
St. Marys Railroad Company
Atlantic and Yadkin Railway Company
The Townsville Railroad Company
Virginia Southern Railroad Company
Warrenton Rail Road Company
McRay Terminal Railway
Tampa Northern Railroad Company
Interstate Railroad Company (undivided one-half interest)
Chatham Terminal Company (undivided one-half interest)

Winston-Salem Southbound Railway Company (undivided one-half interest)

St. Louis and Hannibal Railroad Company

SYSTEM NO. 8—ATLANTIC COAST LINES

Atlantic Coast Line Railroad Company

Louisville and Nashville Railroad Company

The Nashville, Chattanooga and St. Louis Railway

Clinchfield Railroad Company

Atlanta, Birmingham and Coast Railroad Company

Gulf, Mobile and Northern Railroad Company

New Orleans Great Northern Railroad Company

Chicago, Indianapolis and Louisville Railway Company (undivided one-fourth interest)

Winston-Salem Southbound Railway Company (undivided one-half interest)

Alabama and Western Florida Railroad Company

Alabama, Floridan and Gulf Railroad Company

Alcolu Railroad Company

Apalachicola Northern Railroad Company

Artemus-Jellico Railroad Company

Ashland Railway Company

Atlantic and Carolina Railroad Company

Charleston and Western Carolina Railway Company

Columbia, Newberry and Laurens Railroad Company

Elberton and Eastern Railroad Company

Live Oak, Perry and Gulf Railroad Company

Rockingham Railroad Company

Virginia and Carolina Southern Railroad Company

Beaufort County Lumber Company Railroad

Black Mountain Railway Company

Bonhomie and Hattiesburg Southern Railroad Company

The Carolina Southern Railway Company

Carolina Western Railroad

Carrollton and Worthville Railroad Company

Chattahoochee Valley Railway Company

East Carolina Railway

Flemingsburg and Northern Railroad Company

Hampton and Branchville Railroad Company

Kentucky, Rockcastle and Cumberland Railroad Company
 Laurinburg and Southern Railroad Company
 The Mammoth Cave Railroad Company
 Manistee and Repton Railroad Company, Inc.
 The Marianna and Blontstown Railroad Company
 Milstead Railroad Company
 Lakeland Railway
 Mississippi and Western Railroad Company
 Mississippi Central Railroad Company
 Mississippi Export Railroad Company
 Mountain Central Railway Company
 Nashville and Atlantic Railroad Company
 Northwestern Railroad Company of South Carolina
 Norton and Northern Railway
 Ohio and Kentucky Railway Company
 Roaring Fork Railroad Company
 Rockcastle River Railway Company
 Savannah and Atlantic Railway
 Tennessee, Alabama and Georgia Railway
 Tuskegee Railroad Company
 Washington and Lincolnton Railroad Company
 Wilmington, Brunswick and Southern Railroad Company
 Belt Line Railway Company
 Savannah River Terminal Company
 Port St. Joe Dock and Terminal Railway Company

SYSTEM NO. 9—SOUTHERN

Southern Railway Company (excluding Mobile and Ohio Railroad Co.)
 Norfolk Southern Railroad Company
 Tennessee Central Railway Company (portion Nashville to Harriman)
 Florida East Coast Railway Company
 Chicago, Indianapolis and Louisville Railway Company (undivided one-fourth interest)
 Alabama and Northwestern Railroad Company
 Appalachian Railway Company
 Atlantic and Western Railroad Company
 Augusta Northern Railway

Bamberg, Ehrhardt and Walterboro Railway Company
Carolina and Northwestern Railway Company
Dover and South Bound Railroad Company
Due West Railway
East Tennessee and Western North Carolina Railroad Company
Elkin and Alleghany Railroad Company
Frankfort and Cincinnati Railway Company
The Gainesville and Northwestern Railroad Company
Gainesville Midland Railway
Georgia and Florida Railroad
Graham County Railroad Company
Hartwell Railway Company
Lancaster and Chester Railway Company
Linville River Railway Company
The Little River Railroad Company
Trans Florida Central Railroad Company
The Mobile and Gulf Railroad Company
Morgan and Fentress Railway Company
Oneida and Western Railroad Company
Pearl River Valley Railroad Company
Pickens Railroad Company
Pigeon River Railroad Company
The South Georgia Railway Company
Sumter and Choctaw Railway Company
Tennessee Railroad Company
Tennessee and North Carolina Railroad Company
Tennessee, Kentucky and Northern Railroad Company
Tuckaseegee and Southeastern Railway Company
Virginia Blue Ridge Railway
Ware Shoals Railroad Company
Cincinnati Burnside and Cumberland River Railway Company
Ferdinand Railroad Company
Louisville, New Albany and Corydon Railroad Company
Interstate Railroad Company (undivided one-half interest)

SYSTEM NO. 10—ILLINOIS CENTRAL

Illinois Central Railroad Company
Gulf and Ship Island Railroad Company
The Yazoo and Mississippi Valley Railroad Company

Batesville Southwestern Railroad
Central of Georgia Railway Company
Louisville and Wadley Railroad Company
Sylvania Central Railway Company
Wadley Southern Railway Company
Wrightsville and Tennille Railroad Company
The Minneapolis and St. Louis Railroad Company
Tennessee Central Railway Company (Nashville to Hopkinsville)
St. Louis Southwestern Railway Company
St. Louis Southwestern Railway Company of Texas
Louisiana Railway and Navigation Company of Texas
Atlanta and Saint Andrews Bay Railway Company
Bowdon Railway Company
Cadiz Railroad Company
Canton and Carthage Railroad Company
Collins and Glenville Railroad
Fernwood, Columbia and Gulf Railroad Company
Flint River and Northeastern Railroad Company
The Georgia Northern Railway Company
Garyville Northern Railroad Company
Georgia, Asburn, Sylvester and Camilla Railway Company
Mississippi and Skuna Valley Railroad Company
Mississippi Southern Railroad
The Natchez, Columbia and Mobile Railroad Company
New Orleans, Natalbany and Natchez Railway Company
Sandersville Railroad Company
Shearwood Railway Company
Smithonia and Dunlap Railroad Company
Talbotton Railroad Company
Kosciusko and South Eastern Rail Road Co.
Chatham Terminal Company (undivided one-half interest)
Blytheville, Leachville and Arkansas Southern Railroad Company
Deering Southwestern Railway
Fordyce and Princeton R. R. Co.
Gideon and North Island Railroad Company
Jefferson and Northwestern Railway Company
The Louisiana and North West Railway Company
Paris and Mt. Pleasant Railroad Co.
Shreveport, Houston and Gulf Railroad Company

Tremont and Gulf Railway Company
The LaSalle and Bureau County Railroad Company

SYSTEM NO. II—CHICAGO & NORTH WESTERN

Chicago and North Western Railway Company
Chicago, St. Paul, Minneapolis and Omaha Railway Company
Chicago and Eastern Illinois Railway Company
Mobile and Ohio Railroad Company
Columbus and Greenville Railway Company
Lake Superior and Ishpeming Railroad Company
Cazenovia Southern Railroad Company
Hillsboro and North-Eastern Railway Company
The North and South Railway Company
Mineral Point and Northern Railway Company
Superior and Southeastern Railway Company
Sioux City Bridge Company
Northwestern Coal Railway Company
Alabama Central Railway
Birmingham, Selma and Mobile Railroad Company
DeKalb and Western Railroad Company
Mississippi and Alabama Railroad Company
Mississippi Eastern Railroad Company
Jefferson Southwestern Railroad Company
Litchfield and Madison Railway Company

SYSTEM NO. 12—GREAT NORTHERN—NORTHERN PACIFIC

Great Northern Railway Company
Northern Pacific Railway Company
Farmers Grain and Shipping Company
Minnesota and International Railway Company
Gilmore and Pittsburgh Railroad Company, Ltd.
Spokane, Portland and Seattle Railway Company
Oregon Trunk Railway
Oregon Electrical Railway Company
United Railways Company
Butte, Anaconda and Pacific Railway Company (undivided one-half interest)
Gales Creek and Wilson River Railroad Company
Hartford Eastern Railway Company

Hill City Railway Company
Minneapolis and Rainy River Railway Company
Minneapolis, Red Lake and Manitoba Railway Company
Minnesota, Dakota and Western Railway Company
Montana Western Railway Co.
Montana, Wyoming and Southern Railroad Company
Puget Sound and Cascade Railway Company
The Waterville Railway Company
Washington Western Railway Company
Camas Prairie Railroad Company (undivided one-half interest)
Cowlitz, Chehalis and Cascade Railway (undivided one-third interest)
Newaukum Valley Railroad Company (undivided one-third interest)
Craig Mountain Railway Company (undivided one-half interest)
Duluth and Northeastern Railroad Company (undivided one-half interest)
Longview, Portland and Northern Railway Company (undivided one-half interest)
Nezperce and Idaho Railroad Company (undivided one-half interest)
Oregon, California and Eastern Railway Company (undivided one-half interest)
Washington, Idaho and Montana Railway Company
Columbia and Cowlitz Railway Company

SYSTEM NO. 13—MILWAUKEE

Chicago, Milwaukee, St. Paul and Pacific Railroad Company
Chicago, Milwaukee and Gary Railway Company
White Sulphur Springs and Yellowstone Park Railway Company
Duluth, Missabe and Northern Railway Company
The Duluth and Iron Range Rail Road Company
Butte, Anaconda and Pacific Railway Company (undivided one-half interest)
Trackage rights over Spokane, Portland and Seattle Railway, from Portland, Ore., to Spokane, Washington.
Copper Range Railroad Company
Escanaba and Lake Superior Railroad Company
Marinette, Tomahawk and Western Railroad Company

Midland Continental Railroad
Port Angeles Western Railroad Company
Port Townsend and Puget Sound Railway Company
Ontonagon Railroad Company
Davenport, Rock Island and North Western Railway Company
(undivided one-half interest)
Cowlitz, Chehalis and Cascade Railway (undivided one-third
interest)
Duluth and Northeastern Railroad Company (undivided one-half
interest)
Newaukum Valley Railroad Company (undivided one-third
interest)
Washington, Idaho and Montana Railway Company (undivided
one-half interest)

SYSTEM NO. 14—BURLINGTON

Chicago, Burlington and Quincy Railroad Company
Colorado and Southern Railway Company
Fort Worth and Denver City Railroad Company
Quincy, Omaha and Kansas City Railroad Company
Green Bay and Western Railroad Company
Ahnapee and Western Railway Company
Kewaunee, Green Bay and Western Railroad Company
Missouri-Kansas-Texas Railroad Company
Missouri-Kansas-Texas Railroad Company of Texas
The Trinity and Brazos Valley Railway Company (undivided
one-half interest)
Bartlett Western Railway
Beaver, Meade and Englewood Railroad Company
Bevier and Southern Railroad Company
Colorado and Southeastern Railroad Company
Colorado and Wyoming Railway Company
Eastland, Wichita Falls and Gulf Railroad Company
Ettrick and Northern Railroad Company
Galesbury and Great Eastern Railroad Company
Hooppole, Yorktown and Tampico Railroad Company
La Crosse and Southeastern Railway Company
Lowell and Southern Railroad Company

Macomb, Industry and Littleton Railway Company
Oklahoma City-Ada-Atoka Railway Company
Rapid City, Black Hills and Western Railroad Company
Roby and Northern Railroad Company
Rockport, Langdon and Northern Railway Company
Shelby County Railway Company
Shelby Northwestern Railway Company
Tabor and Northern Railway Company
Wyoming Railway Company
Hannibal Connecting Railroad Company
Winona Bridge Railway Company
Davenport, Rock Island and North Western Railway Company
 (undivided one-half interest)
Great Western Railway Company (undivided one-half interest)

SYSTEM NO. 15—UNION PACIFIC

Union Pacific Railroad Company
Los Angeles and Salt Lake Railroad Company
Oregon Short Line Railroad Company
Oregon-Washington Railroad and Navigation Company
St. Joseph and Grand Island Railway Company
The Kansas City Southern Railway Company
The Arkansas Western Railway Company
Texarkana and Fort Smith Railway Company
Utah Railway Company
Christie and Eastern Railway Company
Great Southern Railroad Company
Intermountain Railway Company
Laramie, North Park and Western Railroad Company
The Leavenworth and Topeka Railroad Company
Leeville, Slagle and Eastern Railway Company
The Mansfield Railway and Transportation Company
Mount Hood Railroad Company
Oklahoma and Rich Mountain Railroad Company
Pacific Coast Railroad Company
Pacific and Idaho Northern Railway Company
Sabine and Neches Valley Railway Company
Texas, Oklahoma and Eastern Railroad Company
Tonopah and Tidewater Railroad Company

Death Valley Railroad Company
Union Railroad of Oregon
Sumpter Valley Railway Company
Bingham and Garfield Railway Company (undivided one-half interest)
Camas Prairie Railroad Company (undivided one-half interest)
Cowlitz, Chehalis and Cascade Railway (undivided one-third interest)
Newaukum Valley Railroad Company (undivided one-third interest)
Longview, Portland and Northern Railway Company (undivided one-half interest)
Nezperce and Idaho Railroad Company (undivided one-half interest)
Craig Mountain Railway Company (undivided one-half interest)
The Great Western Railway Company (undivided one-half interest)
The Big Creek and Telocaset Railroad Company

SYSTEM NO. 16—SOUTHERN PACIFIC

Southern Pacific Company
Holton Inter-Urban Railway Company
Nevada-California-Oregon Railway
Texas and New Orleans Railroad Company
Northwestern Pacific Railroad Company
San Diego and Arizona Railway Company
Sunset Railway Company (undivided one-half interest)
Amador Central Railroad Company
Angelina and Neches River Railroad Company
Aransas Harbor Terminal Railroad
Arcata and Mad River Railroad Company
Arizona Southern Railroad Company
Bucksport and Elk River Railroad Company
The California and Oregon Coast Railroad Company
California Central Railroad Company
California, Shasta and Eastern Railway Company
California Western Railroad and Navigation Company
Camino, Placerville and Lake Tahoe Railroad Company

Carlton and Coast Railroad Company
Caro Northern Railway Company
Cement, Tolenas and Tidewater Railroad Company
Diamond and Caldor Railway Company
East Texas and Gulf Railway Company
Fredericksburg and Northern Railway Company
Groveton, Lufkin and Northern Railway Company
Lufkin, Hemphill and Gulf Railway Company
Louisiana Southern Railway Company
Magma Arizona Railroad Company
Mascot and Western Railroad Company
McCloud River Railroad Company
Minarets and Western Railroad Company
Moscow, Camden and San Augustine Railroad
Mt. Tamalpais and Muir Woods Railway
The Nacogdoches and Southeastern Railroad Company
Nevada Copper Belt Railroad Company
Nevada County Narrow Gauge Railroad Company
Oregon, Pacific and Eastern Railway Company
Pacific Coast Railway Company
Pajaro Valley Consolidated Railroad Company
Peninsular Railway Company
Port Isabel and Rio Grande Valley Railway
Ray and Gila Valley Railroad Company
Rio Grande Micolithic and Northern Railway
San Joaquin and Eastern Railroad Company
Santa Maria Valley Railroad Company
Texas Southeastern Railroad Company
Tonopah and Goldfield Railroad Company
Uvalde and Northern Railway Company
Virginia and Truckee Railway
Trona Railway Company
Waco, Beaumont, Trinity and Sabine Railway Company
Tucson, Cornelia & Gila Bend Railroad Company
Valley and Siletz Railroad Company
Ventura County Railway Company
Willamette Valley and Coast Railroad Company
Yosemite Valley Railroad Company

Bay Point and Clayton Railroad Company (undivided one-third interest)
Eureka-Nevada Railway Company (undivided one-half interest)
The Nevada Central Railroad Company (undivided one-half interest)
Nevada Northern Railway Company (undivided one-half interest)
Oregon, California and Eastern Railway Company (undivided one-half interest) Yreka Railroad Company

SYSTEM NO. 17—SANTA FE

The Atchison, Topeka and Santa Fe Railway Company
Gulf, Colorado and Santa Fe Railway Company
Kansas City, Mexico and Orient Railway Company
Kansas City, Mexico and Orient Railway Company of Texas
Panhandle and Santa Fe Railway Company
Chicago Great Western Railroad Company
Missouri North Arkansas Railway Company
Midland Valley Railroad Company
The Apache Railway Company
Arizona and Swansea Railroad Company
The Cimarron and Northwestern Railway Company
The Colorado-Kansas Railway Company
The Garden City Western Railway Company
Gulf, Texas and Western Railway Company
Hanover Railway Company
Manchester and Oneida Railway Company
Minneapolis, Northfield and Southern Railroad
Minnesota Western Railroad Company
The New Mexico Midland Railway Company
Osage Railway Company
Port Bolivar Iron Ore Railway Company
The Rio Grande Eastern Railway Corporation
Rock Island Southern Railway Co.
Santa Fe Northwestern Ry. Co.
Sierra Railway Company of California
Verde Tunnel and Smelter Railroad Company
Helena Southwestern Railroad Company
Bay Point and Clayton Railroad Company (undivided one-third interest)

SYSTEM NO. 18—MISSOURI PACIFIC

Missouri Pacific Railroad Company
New Orleans and Lower Coast Railroad Company
New Orleans, Texas and Mexico Railway Company
The Beaumont, Sour Lake and Western Railway Company
International-Great Northern Railroad Company
New Iberia and Northern Railroad Company
The Orange and Northwestern Railroad Company
East St. Louis, Brownsville and Mexico Railroad Company
San Antonio Southern Railway Company
San Antonio, Uvalde and Gulf Railroad Company
San Benito and Rio Grande Valley Railway Company
Sugar Land Railway Company
The Texas and Pacific Railway Company
Abilene and Southern Railway Company
Cisco and Northeastern Railway Company
Kansas, Oklahoma and Gulf Railway Company
Forth Smith and Western Railway Company
The Western Pacific Railroad Company
The Rio Grande Southern Railroad Company
The Denver and Rio Grande Western Railroad Company
The Denver and Salt Lake Railway Company
Asherton and Gulf Railway Company
Asphalt Belt Railway Company
Houston and Brazos Valley Railroad Company
The Orange and Northwestern Railroad Company
Rio Grande City Railway Company
The Denison and Pacific Suburban Railway Company
Pecos Valley Southern Railway Company
The Weatherford Mineral Well and Northwestern Railway
Company
Arkansas Railroad
Arkansas Short Line
Ashley, Drew and Northern Railway Company
Augusta Railroad Company
Brookings and Peach Orchard Railroad Company
Cape Girardeau Northern Railway Company
Carbon County Railway Company

The Crystal River and San Juan Railroad Company
Dardanelle and Russellville Railroad Company
Doniphan, Kensett and Searcy Railroad
Grand Prairie-Branch Railroad Company
Graysonia, Nashville and Ashdown Railroad Company
Gulf and Northern Railway Company
Indian Valley Railroad Company
The Lake Providence, Texarkana and Western Railroad
The Manitou and Pikes Peak Railway Company
The Midland Terminal Railway Company
Mississippi River and Bonne Terre Railway
Missouri-Illinois Railroad Company
Missouri Southern Railroad Company
Montan Railroad
Murfreesboro-Nashville Southwestern Railway Company
The Natchez, Urania and Ruston Railway Company
Northeast Oklahoma Railroad Company
Okmulgee Northern Railway Company
Ouachita and Northwestern Railway Company
The Prescott and Northwestern Railroad Company
Quincy Railroad Company
Reader Railroad
Rio Grande and Eagle Pass Railway Company
Roscoe, Snyder and Pacific Railway Company
The San Luis Central Railroad Company
The San Luis Valley Southern Railway Company
The Silverton Northern Railroad Company
Stockton, Terminal and Eastern Railroad
Texas Short Line Railway Company
Tooele Valley Railroad Company
Trinity Valley Southern Railroad Company
The Uintah Railway Company
L'Anguille River Railway Company
Trinity Valley and Northern Railway Company
The Creek Railroad Company
Bauxite and Northern Railway Company (undivided one-half interest)

Bay Point and Clayton Railroad Company (undivided one-third interest)
Bingham and Garfield Railway Company (undivided one-half interest)
Eureka-Nevada Railway Company (undivided one-half interest)
Nevada Northern Railroad Company (undivided one-half interest)
The Nevada Central Railroad Company (undivided one-half interest)

SYSTEM NO. 19—ROCK ISLAND-FRISCO

The Chicago, Rock Island and Pacific Railway Company
The Chicago, Rock Island and Gulf Railroad Company
St. Louis-San Francisco Railway Company
St. Louis-San Francisco and Texas Railway Company
Fort Worth and Rio Grande Railway Company
Kuanah, Acme and Pacific Railway Company
Alabama, Tennessee and Northern Railroad Corporation
Louisiana and Arkansas Railway Company
The Trinity and Brazos Valley Railway Company (undivided one-half interest)
Louisiana Railway and Navigation Company
Alabama Central Railway
Meridian and Bigbee River Railway Company
Mississippi Railway
Arkansas and Louisiana Missouri Railway Company
Atlantic Northern Railway Company
Burlington, Muscatine and Northwestern Railway Company
Cairo, Truman and Southern Railroad Company
Cassville and Exeter Railway Company
Central Railway Company of Arkansas
Combs, Cass and Eastern Railroad Company.
DeQueen and Eastern Railroad Company
Texas, Oklahoma and Eastern Railroad Company
El Dorado and Western Railway Company
Fort Smith, Subiaco and Rock Island Railroad Company
The Kansas and Oklahoma Railway Company
The Louisiana and Pine Bluff Railway Company
Manila and Southwestern Railway Company
Miami Mineral Belt Railroad Company

Northern Louisiana and Gulf Railway Company
Ozark Southern Railway Company
Poplar Bluff and Van River Railway Company
Red River and Gulf Railroad
The Sibley, Lake Bisteneau and Southern Railway Company
Thornton and Alexandria Railway Company
Wichita Falls and Southern Railroad Company
Warren and Saline River Railroad Company
Warren and Ouachita Valley Railway Company
The Wichita and Northwestern Railway Company
Oklahoma-Southwestern Railway Company
Oklahoma-Union Railway Company
Bauxite and Northern Railway Company (undivided one-half interest)

SYSTEM NO. 20—CANADIAN NATIONAL

Canadian National Railway Company lines in New England
Central Vermont Railway Company
Detroit, Grand Haven and Milwaukee Railway Company
Grand Trunk Western Railway Company
White River Road Company (of Vermont)
Woodstock Railway Company
Indiana Northern Railway Company (undivided one-half interest)
South Buffalo Railway Company (undivided one-sixth interest)

SYSTEM NO. 21—CANADIAN PACIFIC

Canadian Pacific Railway Company lines in New England
Minneapolis, St. Paul and Sault Ste. Marie Railway Company
Spokane International Railway Company
Duluth, South Shore and Atlantic Railway Company
Mineral Range Railroad Company

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